

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

George C. James, Jr., Circuit Court Judge

NICHOLAS PARKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001154

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- 1 Q The light bulb went off; didn't it? She was there.
- 2 A At the -- in the courtroom, yes, sir. That wasn't a bond
- 3 hearing. That was a bond reduction to get a bond.
- 4 Q No, I'm talking about at the jailhouse.
- 5 A No.
- 6 Q Right?
- 7 A Yeah, that's what I was talking about at the jailhouse
- 8 the 9th or the 10th.
- 9 Q At the jailhouse she was -- she was there.
- 10 A No, she wasn't there.
- 11 Q Okay, that's your testimony and you want to stick with
- 12 it.
- 13 A She was here in the courtroom, but she wasn't at the
- 14 jailhouse.
- 15 Q I got you. We'll, we'll get -- all right, we'll get to
- 16 that. It's your testimony that she wasn't at the bond
- 17 hearing.
- 18 A At the courtroom, no, sir.
- 19 Q At the jailhouse.
- 20 A At the jailhouse, she was here in the courtroom.
- 21 Q The courtroom she was here.
- 22 A Right.
- 23 Q Okay, so, was it leading you on when she stood right here
- 24 where the Judge was right there and I expressed to the Judge
- 25 that she was deathly afraid of you. You didn't get a clue

- 1 then that she wasn't leading you on.
- 2 A I didn't bother her after that or even before that. It
3 was a ---
- 4 Q What date are these -- do I need to show you the dates
5 that these letters were written?
- 6 A Two -- yeah, of 2005 or 2006, let me see it.
- 7 Q Yeah, you better look at it, I think.
- 8 A I, I got a bond hearing in December.
- 9 Q December of 2006?
- 10 A Yeah, December 2006, December 11th. These happened in
11 June.
- 12 Q Certainly after your bond hearing in local -- in the
13 local jail; correct?
- 14 A Exactly, she wasn't there, no.
- 15 Q You didn't -- she wasn't there.
- 16 A Exactly.
- 17 Q All right, and you're also saying that this whole Tuesday
18 thing wasn't working out for you because you didn't want to
19 miss that day off of work; right?
- 20 A Yes, sir.
- 21 Q Okay, by the way, happen to file income taxes the last
22 couple of years?
- 23 A No, because see that -- I get paid under the table for
24 that but I do got income taxes and that was -- she was telling
25 me to wait for her because we going to put the kids on income

1 tax to do that and then she turned around and filed them
2 before I did. So, that's I still got income tax pending that
3 I ain't filed yet.

4 Q And you only, you only manage to work by the hour;
5 correct, right?

6 A No, at first I used to work by the week.

7 Q But around this time period in January you by your own
8 testimony you were working by the hour; isn't that what you
9 said?

10 A While she was living with me, yes.

11 Q No, no, when she was gone after January 17th wasn't it
12 your testimony to our jury that you were working by the hour?

13 A I wasn't working by the hours then.

14 Q Okay, well, I take it this motorcycle, I'm sorry, this
15 body shop place they kind of keep regular hours like eight to
16 four or nine to five?

17 A No, sir.

18 Q They don't?

19 A Nah, they open at eight and all the way till sometime he
20 stays 11. He goes -- it's his own business, his private
21 business. He does what he wants.

22 Q Okay, they open at eight.

23 A That's what he told me. He said if I wanted he'd pay me
24 by the hour but I worked all week. I was working about \$250 a
25 week, \$300 a week.

1 Q Okay.

2 A And he said if I didn't fill in the full week he would
3 pay me by the hour. That was our agreement.

4 Q Okay.

5 A I didn't get into detail earlier.

6 Q Well, let's get this detail. You say that you -- after
7 January 17th you were working weekly at this place; correct?

8 A Every time I worked I worked weekly, but yes.

9 Q All right, so, you testified that when she came to see
10 you after she left on January 17th she had beaten you to work,
11 it was about 11 o'clock.

12 A We supposed to meet at work. We had an agreement before
13 that to meet at my job, but I didn't get there till 11
14 o'clock.

15 Q Oh, okay.

16 A Because she, she -- you know what it said she told her
17 mamma that she was -- that she had to her daddy's gravesite,
18 that's the whole reason she come down here, but that wasn't
19 the -- she went and seen it, but that was the reason for her
20 to come see me.

21 Q Now, when you were telling our jury about meeting her
22 there I don't recall you ever mentioning anything about having
23 arranged to meet her at 11 o'clock.

24 A I didn't get in detail. All I did is answer Mr. Goude's
25 questions.

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1 Q Did Mr. Goude prevent you from saying anything you wanted
2 to say?

3 A No, sir.

4 Q Well, despite that fact, you're not working the regular
5 shift. You come in at 11. Is that customary for you to come
6 and go when you feel like when you're working weekly?

7 A At that job, yes, because I could work from 11 to 11 at
8 night.

9 Q Oh, I see, okay. All right, by the way, you know how we
10 might find this Mr. Leonard?

11 A I think he's in jail. I'm not, I'm not positive.

12 Q You think he's in jail. You think he's in
13 jail.

14 A Yes, sir.

15 Q By the way, you talked all about these beer cans and
16 marijuana and cocaine residue, and you correct me if I'm
17 wrong, you didn't mention one word of that to Paul Glover, not
18 a word.

19 A No, sir, maybe I did. I don't remember.

20 Q Thank you. Nothing further.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. GOUDE:

24 Q Mr. Parker, the prosecutor was asking you about some
25 things from some letters. Let me see if I can find anything

1 to ask you about them from the letters. Does it say, "Every
2 day I regret that morning. I never intended to do what
3 happened."

4 A Yes, sir.

5 Q "You called me that morning and I was so excited to see
6 you. I couldn't wait to see you."

7 A Yes, sir.

8 Q And that was the one dated June ---

9 MR. MODICA: Can you please reference it by date and
10 exhibit number, please.

11 THE COURT: Which date? There are two different
12 letters or exhibit number.

13 Q Is that on State's Exhibit 22 dated June the 6th, 2006.

14 A Yes, sir.

15 Q Does it say, "At that point in time I didn't realize you
16 were not living at your trailer at the time?"

17 A Yes, sir.

18 Q Does it say, "You had no reason to even talk to me after
19 you got all your stuff from nanna's."

20 A Nanna's, yes, sir.

21 Q Does it say, "I got all shaky when I seen you today"?

22 A Yes, sir.

23 Q "I couldn't even make a" ---

24 MR. MODICA: Objection. May we approach?

25 (Whereupon, a Bench conference was held in the presence,

1 but out of the hearing, of the jury.)

2 MR. MODICA: Thank you.

3 Q Does it say, "I am glad you told me to write you"?

4 A Yes, sir.

5 Q "I sit back and think of all the money I spent on coke."

6 A Yes, yes, sir.

7 MR. MODICA: Are you looking at the same one,
8 counsel?

9 MR. GOUDE: I'm looking at the one dated, yeah,
10 it's the same one that's on the one, two, three, fourth page.
11 BY MR. GOUDE:

12 Q "I figured if I always had coke then you would be
13 happy."

14 A Yes, sir.

15 Q "Did you order canteen? I know your mom looks out for
16 you. If not, let me know and I can help a little bit."

17 MR. MODICA: Your Honor, objection, Your Honor,

18 THE COURT: I sustain the objection. You can move on
19 to something different.

20 Q "When you write back write it to me."

21 A Yes, sir.

22 Q And the other one dated, that would be in June 6th. This
23 one would be in June 7th exhibit, prosecution exhibit 23.

24 "Did you tell me you loved me because after I talked to" ---

25 MR. MODICA: Your Honor, objection.

1 THE COURT: Yeah, I sustain the objection.

2 Q You say, "You said you were going to help. Please let
3 me know what your plan is."

4 A Yes, sir.

5 Q There's been questions about, as I understand the point
6 the prosecutor was making is that you have said that when you
7 taped up the girl's feet or ankles in the trailer how long the
8 tape stayed on in the trailer before you took the tape off of
9 her feet. So that I am clear, did the -- you put duct tape on
10 the girl's feet or ankles in her trailer at BB Smith's trailer
11 park?

12 A Yes, sir.

13 Q Did you yourself take the duct tape off of her feet?

14 A Yes, sir.

15 Q And did you take the duct tape off of her feet in the
16 trailer or in the truck or in the garage apartment or in your
17 house in Summerville or where?

18 A In the truck.

19 Q In the truck?

20 A Yes, sir.

21 Q You didn't take it off in the trailer and leave
22 it in the trailer?

23 A No, sir. Well, the first -- yeah -- off, at first when I
24 put a piece on her foot I took it off because it was twisted
25 up and mangled up. Then I put another piece on.

1 Q Another piece on her feet?

2 A Yes, sir.

3 Q And after you taped her up did you immediately leave the
4 trailer?

5 A Yes, sir.

6 Q When you gave the statement to the police that was on the
7 CD that we've watched, the police said that the time was 11:30
8 at night when you all started talking; is that correct?

9 A Yes, sir.

10 Q Had you had any alcohol to drink before you made that
11 statement that day and that night?

12 A Yeah, on the way, when my uncle come home on the way to
13 the police station I had about three beers.

14 Q What size beers?

15 A I think 12-ounce bottles.

16 Q 12 ounce what?

17 A Bottles.

18 Q Bottles?

19 A Yes, sir.

20 Q Had you used any drugs that day?

21 A No, sir, I was going to smoke a joint on the way up there
22 but I decided not to.

23 Q When -- there's been talk about the prosecution witness
24 leaving on January 17th by the prosecutor. The -- when the
25 prosecution witness was living with you from November, early

1 December of '05 till January 17th of '06 in Summerville at
2 your home did the prosecution witness have a vehicle there
3 then?

4 A No, sir.

5 Q If the prosecution witness was going to leave from
6 Summerville and return to your mother's house in Georgetown
7 County how would she have to travel?

8 A Either get somebody to pick her up or get us to bring her
9 up there.

10 MR. MODICA: Phone records?

11 MR. GOUDE: Yeah.

12 A Yes.

13 Q Now, you had said that at some point after January the
14 29th, the Sunday, the day the incident occurred that at some
15 point later between then and now you talked with the
16 prosecution witness on the telephone; is that correct?

17 A Yes, sir, several times.

18 Q What was the first -- how many days passed from that
19 morning, that Sunday morning, when the incident happened
20 before you next talked to the prosecution witness on the
21 telephone?

22 A Maybe two or three, maybe a week, it was closer to two or
23 three days.

24 Q Okay, two or three days. So, the day, the Sunday that it
25 occurred was according to the calendar was, the incident

1 occurred January the 29th; correct?

2 A Yes, sir.

3 Q So, two or three days would have been, when you would
4 have talked with the girl on the phone, would have been
5 approximately what date?

6 A The 1st of February or maybe the 2nd or the 31st and the
7 1st.

8 Q And the phone records that the prosecutor, the phone
9 records that the prosecutor asked you to look at and see if
10 the girl's telephone call was on there, the earliest date on
11 that phone record is what date?

12 A The 27th.

13 Q Of what month?

14 A Of January.

15 Q And the latest phone record that's on that record is what
16 date?

17 A The 30th.

18 Q Of what month?

19 A On January.

20 Q And ends about what time?

21 A About 12 o'clock that night.

22 Q 2200 is what time?

23 A Should be about 12, right, no, no, 10, 10.

24 Q Ten p.m.?

25 A Yes, sir.

1 Q That's all the questions I have, Judge.

2 THE COURT: Any recross?

3 RECROSS EXAMINATION

4 BY MR. MODICA:

5 Q Just one question. Didn't you tell our jury that you
6 said that you talked to her the day that she was headed to the
7 police which was January 30th?

8 A That morning, yeah.

9 Q Okay, and you did look through the records and they're
10 not there; correct?

11 A Because I called, I called her. She didn't call me.

12 Q Correct.

13 A Right.

14 Q Outgoing call.

15 A Right.

16 Q From your grandmother's house.

17 A Right.

18 Q But it's not on there; correct?

19 A It's on there.

20 Q I asked you to look for it. Do you want to look again?

21 A I called. Yeah, I'll look.

22 THE COURT: Whoa, whoa, whoa, just keep your seat.

23 They'll get it for you.

24 Q I'm sorry. My mistake. You said that you tried to call

25 -- hold on one second. Mr. Parker, you said that you tried to

1 call her calling out, you only got her mother; correct?

2 A Correct.

3 Q All right, I think it was your testimony, you correct me
4 if I'm wrong, that she made a call to you.

5 A No.

6 Q Okay, no, she didn't make a call to you?

7 A No, I didn't say that. I said I tried -- she didn't call
8 me. I called her. I talked to her on the phone at the police
9 station is what I said. I didn't say if she called me or I
10 called her.

11 Q When I asked you about it you said the only person you
12 spoke to that day was her mother.

13 A That morning.

14 Q Okay, all right, thank you.

15 THE COURT: You can step down, thank you.

16 Members of the jury panel we'll take our afternoon break.
17 If you'll follow the bailiff to the jury room.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: All right, we'll take a short break.

21 ***** OFF THE RECORD *****

22 (On the record.)

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: The State ready to proceed?

1 MR. MODICA: Yes, sir.

2 THE COURT: All right, Mr. Goude, anything before we
3 get the jury in?

4 MR. GOUDE: No, sir.

5 THE COURT: All right, bring in the jury.

6 (Whereupon, the following takes place in the presence of
7 the jury.)

8 THE COURT: All right, you can call your next
9 witness.

10 MR. GOUDE: We would call Sherry Ward Parker.

11 AT THIS TIME SHERRY ELAINE WARD PARKER WAS CALLED TO THE
12 STAND, DULY SWORN BY THE CLERK AND TESTIFIED AS FOLLOWS:

13 THE CLERK: Please be seated and state your full name
14 for the record.

15 MS. WARD: My name is Sherry Elaine Ward Parker.

16 DIRECT EXAMINATION

17 BY MR. GOUDE:

18 Q Ms. Parker, what is your address? Where do you live?

19 A At [REDACTED], Summerville, South Carolina.

20 Q What is your age?

21 A I am 44 this year. I'll be 45 in September.

22 Q And what relation are you to the Defendant, Nicholas Lee
23 Parker?

24 A He is my first surviving son.

25 Q Do you know the prosecuting witness in this case, a

1 Belinda Mitchum?

2 A Yes, ma'am, yes, sir. I've known her and her family for
3 years.

4 Q And do you still presently live with your grandmother or
5 your mother and father, James and Shirley Ward, at [REDACTED]
6 Lane?

7 A Yes, sir.

8 Q And did you all take some pictures of your house and the
9 little storage building here in the last day or so at my
10 request?

11 A Yes, sir.

12 Q Did you all develop them and bring them down to me today?

13 A Yes, sir.

14 Q And do these pictures, which are Defense Exhibits 13 to
15 23, inclusive, do they accurately depict or show what's
16 represented in the pictures?

17 A Yes, sir.

18 Q Is this you all's house that you live in and the little
19 out house that's in you all's yard at [REDACTED] in
20 Summerville?

21 A Yes, sir, used to be a garage and we transformed it into
22 a one-bedroom apartment when -- right before I got married.
23 My father built it for me.

24 Q And are these two properties basically or two houses
25 basically the same situation they were in January of 2006, the

1 day this incident occurred?

2 A Yes, sir, all except for the bathroom and the little
3 house which we're trying to remodel.

4 Q And shows the bathroom that you're doing some work on in
5 the outbuilding?

6 A Yes, sir.

7 MR. GOUDE: Judge, we offer this as our Exhibit 13 to
8 23.

9 MR. MODICA: No objection.

10 THE COURT: Be received without objection.

11 (Whereupon, Defense Exhibit Numbers 13 through 23
12 [Photographs] introduced into evidence and
13 appropriately marked.)

14 BY MR. GOUDE:

15 Q And if you would step right down here and point out kind
16 of quickly if you would to the jury what the different
17 pictures show. Number 13 what does that show?

18 A That is a picture taken out of my mother's front door
19 looking out the little house front door.

20 Q And the front door would be in the main house that you
21 all live in?

22 A Yes, sir.

23 Q So that's showing the little house that's in the yard
24 from the front door of the big house?

25 A Yes, sir.

1 Q I might ask you one or two times so all our jurors -- I
2 can remember what I'm showing them and the main house is made
3 out of what kind of materials?

4 A It's half cinder block and half plywood.

5 Q And the little house is made out of what kind of
6 materials?

7 A Well, that's the little house. The main house is a Jim
8 Walter home which my father added on a living room and a
9 kitchen to. It's all wood with a vinyl siding.

10 Q And picture 14 what does that show?

11 A That is the bedroom and the little house which has more
12 boxes in it now which -- well, me and my mother packed up from
13 Nicholas and Belinda from Summer Creek is still in there but
14 it's like in the back corner right here. We added -- use this
15 as storage now.

16 Q This is one of the rooms in the garage apartment?

17 A Yes, sir.

18 Q And one of the rooms in the garage apartment?
19 And this next one is number 15. What does that show?

20 A The top one is the front door going into the kitchen of
21 the little house and then the bottom one is the bathroom which
22 we're reconstructing now.

23 Q That's in the little house, too?

24 A Yes, sir.

25 Q What was at one time maybe a kitchen and is, was or may

1 be at some point in the future a little bathroom in the little
2 house?

3 A Yes, sir. The picture with the dog is the kitchen. It
4 hasn't been lived in for years.

5 Q And number 16 what does that show?

6 A That is a picture from the front entry way looking into
7 my mother's front door.

8 Q And the bottom picture is what?

9 A That is the back door of my mother's house where my mom
10 and dad parked the truck. That's how they did it in the
11 house.

12 Q Front door and back door?

13 A Yes, sir.

14 Q And number 17, what does 17 show?

15 A The top picture is from the inside where the telephone is
16 looking out the front door you can see the front door of the
17 little house.

18 Q That's taken inside the main dwelling, the rest of these
19 pictures; right?

20 A Yes, sir.

21 Q And the middle picture on this Exhibit 17 is?

22 A That's in the kitchen. The telephone is located right
23 there and as you look in this is the front door.

24 Q You can see the inside of the ---

25 A The big house.

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- 1 Q --- white front door.
- 2 A Yes, sir.
- 3 Q And then the bottom pictures shows what?
- 4 A Looking from the front door into the kitchen, the view as
- 5 you're coming in the front door and there would be the
- 6 telephone there, that'd be the kitchen and this is the
- 7 entertainment center that separates the living room from the
- 8 forum, foyer.
- 9 Q That was taken inside the front of the house showing the
- 10 front door of the main house, inside of the main house and the
- 11 way going to the kitchen.
- 12 A Which picture? Yes.
- 13 Q Front door, front door and kitchen?
- 14 A That's looking from the front door and then on the bottom
- 15 one.
- 16 Q And then this is refrigerator, number 18 would be the
- 17 kitchen?
- 18 A Yes, sir. The telephone is right here and the front door
- 19 it's like you'd be right here is the kitchen, the living room,
- 20 separates the living room from the kitchen. It'd be like
- 21 walking into the side.
- 22 Q Number 19, this is what room?
- 23 A That's the living room of the big house, the main house.
- 24 Q And I see there's two couches in there. Some witness
- 25 testified that's where your daddy and mamma sleep, one on each

1 couch?

2 A Yes, sir, my father sleeps here. He's disabled and my
3 mother's couch is on this side so she can be close to him if
4 he needs her.

5 Q And we've got 20 shows what scene?

6 A That's going in the front door into the foyer, which the
7 living room and kitchen would be to the left, and then as you
8 round the corner around the other side that lamp that would
9 take you to like a "T" hallway where the three bedrooms and
10 bathroom are.

11 Q Coming inside the front door of the house?

12 A Yes, sir.

13 Q And number 21 is?

14 A That would be the bedroom, as you round that corner, if
15 you look straight you'll see the bathroom dead ahead of you.
16 That would be the bathroom to, I mean, the bedroom to your
17 right.

18 Q And this is known as whose bedroom?

19 A At that time that was Joshua and Debbie's bedroom. It's
20 my bedroom now. That's the bedroom I am in now.

21 Q At that time that was Josh.

22 A Joshua and Debbie's, right.

23 Q And number 22 looks like a bunk bed in it. What's that?

24 A Yes, sir, that was the bedroom I stayed in and my nephew
25 and when Belinda and Nicholas stayed there MM and

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1 BM stayed in there with me. BM slept on the bottom with
2 me and MM slept on the top. That was the first time they
3 moved in mom and dad's.

4 Q And then number 23 is the bathroom?

5 A Yes, sir, that's where the hall T's like that. If you
6 turn that corner from the foyer and turn that corner that
7 would be exactly what you see is the bathroom like that and
8 then the first bedroom to the right, then the two other
9 bedrooms are to the left.

10 Q All right, thank you. If you'll go back up on your seat,
11 please.

12 A (Complies with request.)

13 MR. GOUDE: Judge, did the Court order all those into
14 evidence?

15 THE COURT: I admitted them into evidence without
16 objection, yes.

17 MR. GOUDE: Thank you; thank you.

18 BY MR. GOUDE:

19 Q Now, you say that you have known the prosecution witness
20 in this case. Do you know the prosecution witness's mother?

21 A Yes, sir.

22 Q What ---

23 A Me and her mother went to middle school together. We
24 were best friends back then. That was like in 5th grade I
25 think it was.

1 Q How long have you known the prosecuting witness herself?

2 A I've known her probably, it's 2007 now, I've probably
3 known her about six or seven years.

4 Q That would have been like 2000 or so, somewhere around
5 the year 2000?

6 A Yes, sir, not -- right around six, seven years.

7 Q I take -- did you know her before your son, Nicholas
8 started seeing her?

9 A Yes, sir.

10 Q And how long have you lived with your parents in their
11 house at [REDACTED]?

12 A I was born and raised there, not unless I was living
13 with, you know, every now and then I moved in with my
14 boyfriend. I may have -- might have stayed with them maybe a
15 year or two on and off, but I always been close to home.
16 Since my father got disabled I've always been there for mom
17 and dad.

18 Q And on the morning of Sunday, January the 29th, 2006,
19 were you staying there with your parents that Sunday?

20 A Yes, sir.

21 Q The day when all this stuff happened?

22 A Yes, sir.

23 Q Were you awake that morning when Nicholas and your mother
24 left the house that morning to come to Georgetown?

25 A No, sir.

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1 Q What's the first thing you saw or noted happened of your
2 own knowledge that morning regarding this incident?

3 A I heard them come in after mom and Nicholas went and
4 picked up Belinda, and I heard them come in because mom come
5 in and asked me if I would help Belinda and Nicholas pack up
6 the boxes and I told her no because ---

7 Q About what time of day or night was that?

8 A That was about nine o'clock in the morning, nine, 9:30,
9 something like that.

10 Q And were you awake and up at the time, were you still in
11 the bed or what?

12 A No, I was up. I got -- well, she -- my mom woke me up
13 and asked me if I would help them pack the boxes up with stuff
14 and I told her no because me and mom is the one that went over
15 there and finished moving Nicholas and Belinda's belongings
16 out of the trailer out of Summer Creek into the little house
17 and we did it by ourselves while Belinda and Nick was up in
18 Georgetown when they first moved up here.

19 Q And what had you moved from the Summer Creek trailer to
20 your house there at Lilac Lane?

21 A What was left inside of the trailer in Summer Creek and
22 also in the shed in the back yard.

23 Q The shed in the back yard of the Summer Creek trailer?

24 A Yes, sir.

25 Q And what kind of containers was the stuff in that you

1 moved from Summer Creek trailer to your house there at Lilac?

2 A They were in boxes and garbage bags, whatever we could
3 find to keep it all together where it wouldn't blow out the
4 truck.

5 Q Approximately how many boxes and garbage bags were there?

6 A Two full truckloads.

7 Q Would that have been like one or two, a dozen, 20,
8 approximately?

9 A It's a full-size truck bed and then we had it loaded up
10 almost to the cab and had to tie it down.

11 Q And the boxes, were the boxes closed or open?

12 A They were closed. The boxes we had were closed. The
13 garbage bags were closed and there were -- there was a few
14 pieces of like furniture or toys, you know, that wasn't boxed
15 up or bagged.

16 Q What kind of material did you use to close the cardboard
17 boxes with?

18 A We had duct tape and we didn't have clear tape at that
19 time. Mamma didn't have a roll thing at that time.

20 Q What color was the duct tape that you used?

21 A It was gray, silver.

22 Q And all that stuff was stored where at your Lilac Lane
23 house?

24 A In the bedroom of the little house is where we put
25 everything.

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1 Q All right, now, so, your mamma asked you to help them
2 pack the stuff up this morning, you didn't. Did you -- when
3 did you next or when did you see the prosecuting witness that
4 morning?

5 A After her and Nicholas loaded the truck up she had come
6 in the house and she said, "Hey, mamma," and they went into
7 Nick's room.

8 Q Who was the prosecuting witness calling mamma?

9 A Me, she refers -- that -- a lot of the young kids around
10 our neighborhood call me mamma, mamma duck, all the young kids
11 call me mamma instead of Ms. Parker.

12 Q Is that what the prosecution witness normally called you?

13 A Pardon?

14 Q Did the prosecuting witness normally call you mamma?

15 A Yes, sir.

16 Q How long she been doing that approximately?

17 A About five, six years.

18 Q All right, and so, she said hey, you said hey and where
19 do you go and where did the prosecuting witness go?

20 A They went into Nicholas's room, which is right across the
21 hall from where I was at where the bunk bedroom is.

22 Q When the, when the prosecuting witness came in the house
23 and said hey to you, was your son Nicholas there with her?

24 A Yes.

25 Q Was her hands or anything taped up then at that time?

1 A No, sir.

2 Q Was she walking of her own two feet or was she being
3 carried or how was she moving?

4 MR. MODICA: Objection to leading.

5 THE COURT: That's a leading question. Yeah,
6 rephrase.

7 Q How was she moving in the house? Yes, sir. How was she
8 moving in the house?

9 A Her and Nicholas had walked in, walked in just like I
10 just got up and walked to that microphone.

11 Q Did you see any kind of duct tape wrapped around her
12 legs?

13 A No, sir.

14 Q Around her hands?

15 A No, sir.

16 Q Over her mouth?

17 A No, sir.

18 Q And they went where when they came in the house?

19 A They went into Nicholas's room, which would be one of the
20 bedrooms to the left in the back where the bathroom, if the
21 bathroom is here the two bedrooms to the left, it would be the
22 room, the room to the back of the house.

23 Q And in relation to your bedroom where was Nicholas's
24 bedroom at that time?

25 A Straight across the hall.

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1 Q And did you all -- what kind of doors did you have on the
2 bedrooms in your house?

3 A There were no doors. We had sheets to cover, you know,
4 you would pull them up, flip them up, you know, and you
5 usually leave them open or when we went to sleep or we wanted
6 privacy we pull the sheets down.

7 Q All right, and about how long did the prosecuting witness
8 and Nicholas stay in Nicholas's bedroom after you saw them go
9 in there?

10 A Well, when they came in after packing they stayed in
11 there. They wanted to take a nap is what they done. They
12 took a nap for about an hour, hour and a half, two hours
13 maybe.

14 Q At any point, excuse me, at any point did you go into
15 Nicholas's bedroom while they were in the bedroom?

16 A Yes, sir.

17 Q What did you see when you went in there?

18 A Belinda was sitting on the bed and Nicholas was like on
19 his knees and they were embracing each other.

20 Q Embracing, what do you mean by that?

21 A Like hugging each other like that.

22 Q Was -- who was hugging whom?

23 A They were both embracing each other.

24 Q At that point was the prosecution witness screaming or
25 hollering for help or anything?

- 1 A No, sir.
- 2 Q Did she ask you to help her when she saw you as you
3 walked, she walked in the house?
- 4 A No, sir.
- 5 Q Did she ask you to call ---
- 6 MR. MODICA: Objection as to leading.
- 7 THE COURT: Yeah, sustained. Rephrase your question.
- 8 Q Now, were you there when the ---
- 9 A May I have something to drink, please?
- 10 THE COURT: Yeah, Mr. Bailiff, would you get her some
11 water?
- 12 Q Were you there when the prosecuting witness and Nicholas
13 and your grandmother, your mother left the house?
- 14 A Yes, sir. Repeat that question, please.
- 15 Q Were you there at the house when your grandmother and
16 Nicholas and the prosecuting witness left the house?
- 17 A Yes, sir.
- 18 Q Did you say anything to the prosecuting witness or did
19 the prosecuting witness say anything to you when they left the
20 house?
- 21 A Yeah, I asked her how -- why she looked so rough and
22 where the babies were.
- 23 Q And what did prosecuting witness say?
- 24 A She said that the babies were out at her mom's.
- 25 MR. MODICA: Objection as to hearsay, Your Honor.

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1 THE COURT: I find it doesn't go to the truth of the
2 matter asserted. So, I'll allow it. Go ahead.

3 A She said the mother was with her -- the children were with
4 her mother and she had been partying that weekend up here in
5 Georgetown. She wasn't in Summerville at that time.

6 Q During the time that you saw them there what type of
7 threats, if any, did you see Nicholas using against the
8 prosecuting witness?

9 A None.

10 Q Can you describe at the time that you were seeing the
11 prosecuting witness there that morning, describe her demeanor,
12 how was she acting?

13 A Well, I've seen, I've seen -- I've seen her and my son
14 both intoxicated. She was intoxicated with something. I
15 don't -- some substance, whether it be alcohol, drugs or
16 whatever, or either that or she had a hangover from either
17 one. Her hair was uncombed, you know, which I've seen her
18 that way a few times.

19 Q I understand that approximately March to October 2005
20 your son Nicholas and the prosecuting witness lived in the
21 camper trailer you were talking about or trailer at the mobile
22 home park in Summer Creek. Did you stay over there with them
23 some during that period of time?

24 A Yes, sir. When I came back from Kentucky. I was in
25 Bowlings Green, Kentucky, doing some construction work up

1 there. Then when I came back I stayed with them for like two
2 or three months over there. I came back in the end of July, I
3 think it was, and I think they moved out from over there and
4 back into mom's around October somewhere right in that -- it
5 was, it was starting to turn to fall.

6 Q Now, since this incident occurred or since this incident
7 Occurred, January the 29th of 2006, after that Sunday did you
8 continue to see the prosecuting witness anytime after that
9 Sunday, January the 29th, 2006?

10 A Yes, sir, on a few occasions and spoke to her on the
11 telephone on a few occasions.

12 Q Approximately how many occasions did you all talk with
13 each other on the telephone after January the 29th, 2006?

14 A At least two or three times a week, maybe four or five,
15 it depended on what was going on.

16 Q Well, how -- speak up loud, get close to that microphone
17 if you will. How long did that -- those conversations go on?
18 After January how long did you talk with her three or four
19 times a week until approximately when?

20 A Up until around, I guess, October, November of last year
21 right before Nicholas went to his bond hearing which was in
22 December.

23 Q On all these numerous phone calls who was usually calling
24 whom? Was she calling you? Would you call her or what?

25 A Well, she called and then sometimes I'd call her, you

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1 know, it was like back and forth.

2 Q Where was the prosecuting witness living during this time
3 after January the 29th, '06?

4 A At that time she was, she was staying on -- across from
5 the Hot Spot on 17A or either she was up here in Georgetown
6 with her mother or with her aunt, Joyce Ann.

7 Q Where did her aunt live?

8 A Across from the Hot Spot on 17A in Summerville.

9 Q How far is that from you all's home on Lilac Lane?

10 A About ten miles at the most.

11 Q During any of this time since this incident occurred has
12 the -- have you seen the girl at you all's house at Lilac Lane
13 in Summerville since this ---

14 A Yes, sir, she's -- she -- the first time she came to our
15 house she met me the end of our driveway, our dirt road and
16 she was worried about coming up because mom didn't want her
17 there to start with because everything that was going on and
18 then I talked to mom and she, she ended up coming up to the
19 house and she sit out in the yard and she's also sat and
20 waited and spoke with Nicholas when he called collect from the
21 detention center and spoke with him on the phone. She's also
22 come and got me when my daughter-in-law Debbie died and helped
23 me set up jars for her.

24 Q Now, the prosecuting witness has testified that
25 approximately January the 17th, 2006, the date that she moved

1 out, or let me ask it this way, January the 17th, 2006,
2 approximately that day, Tuesday, a week and a half or so
3 before the incident we're talking about, the
4 Plaintiff moved out of you all's house in Summerville?

5 A Yes, sir.

6 Q January the 17th, which was a Tuesday, a week and a half
7 before the incident occurred on January the 29th?

8 A Yes, sir, she moved back in Georgetown a week or two
9 weekends before that happened and on the weekend ---

10 THE COURT: All right, I'm having trouble hearing the
11 witness. Talk into that microphone, please, ma'am.

12 A I'm sorry.

13 Q After she moved out on that Tuesday, January the 17th did
14 she come back over to you all's house between then and January
15 the 29th when the incident occurred?

16 A Yes, sir, the weekend before she came.

17 Q The weekend before what?

18 A The incident happened she was at our house in her
19 mother's white SUV.

20 Q Okay.

21 A She didn't want her mother to know she was there though.

22 MR. MODICA: Objection.

23 THE COURT: Yeah, I sustain the objection. She can't
24 testify why, what's in somebody else's mind. Disregard that
25 statement.

1 Q And did the prosecution witness at that time you're
2 talking about, did the prosecution witness stay overnight that
3 time?

4 A Yes, sir.

5 Q Now, the prosecution witness has lived in the house with
6 you either at Lilac Lane or Summer Creek for off and on during
7 2004, 2005 up to January of '06; is that correct?

8 A Yes, sir.

9 Q Had you all had many conversations, you and the
10 prosecution witness talking back and forth to each other?

11 A Yes, sir.

12 Q Now, did the prosecution witness ever have any problems
13 with her throat or the tone of her voice prior to this January
14 the 29th, '06, that you had noticed prior to January the 29th,
15 '06?

16 A Yes, sir, when everyone was partying overnight and stuff
17 everybody would be hoarse the next day.

18 Q And what would, what would cause the hoarseness?

19 A Cocaine.

20 Q At some point did you and the Plaintiff before this thing
21 ever happened with the prosecution witness, at some point did
22 you and the prosecution witness have a conversation and you
23 told her that if she was worried about her mother she should
24 tell her something had happened to her?

25 A Yes, sir.

1 Q Tell us what the -- where that conversation occurred and
2 about when it occurred and what you all said to each other.

3 MR. MODICA: Objection.

4 THE COURT: I sustain the objection. You can make a
5 proffer on it later, but I sustain the objection. He'll ask
6 you another question.

7 Q All right, what did you tell the prosecution witness
8 about what she should say if she was worried about leaving
9 there?

10 MR. MODICA: Objection.

11 THE COURT: I sustain the objection. I said you
12 could make a proffer on that later.

13 Q And at some point did you, were you seeing or dating a
14 man that lived in the -- was a neighbor to the prosecution
15 witness in the Summerville area?

16 A The fellow she dated before Nicholas, Kevin Johnson.

17 Q No, that you were dating?

18 A Yes, my, my ---

19 Q That -- were you dating a guy that was living in her yard
20 over there at Summerville?

21 A Yes, sir, my ex-boyfriend rents their -- her and her
22 brother's lot that their father left them when he died.

23 Q And was this after the January the 29th, '06 incident or
24 before?

25 A Before and after, he's still there as far as I know. The

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1 camper is anyway. I don't know about him. I haven't seen him
2 in a long time.

3 Q In approximately October or November '06 did you talk
4 with the prosecution witness and she said something to you
5 about what would happen to her if she tried to drop the
6 charges?

7 MR. MODICA: Objection.

8 THE COURT: I sustain the objection.

9 MR. GOUDE: Judge, I'd like to make a proffer on
10 that.

11 THE COURT: You can. You can make a proffer on all
12 of this.

13 MR. GOUDE: That's all the questions I have, Judge.

14 THE COURT: Cross.

15 MR. MODICA: May I have a moment, Your Honor, please?

16 CROSS EXAMINATION

17 BY MR. MODICA:

18 Q You were involved in the raising of your son.

19 A Yes, sir, part time I worked and went to college full
20 time and my mother and father helped raise my children.

21 Q And you have two other sons, I believe?

22 A Yes, sir.

23 Q What's their names?

24 A Joshua and Matthias.

25 Q Joshua is living at the house?

- 1 A Yes, sir.
- 2 Q Matthias is not?
- 3 A No, Matthias is incarcerated at the time.
- 4 Q And this is your parents' house?
- 5 A Yes, sir.
- 6 Q Now, when you were teaching your sons about relationships
- 7 you taught them that it was important to control their
- 8 girlfriends; didn't you?
- 9 A No, sir.
- 10 Q Never did that?
- 11 A Not to control anyone.
- 12 Q In your relationship with your boyfriends you were a take
- 13 control kind of person; correct?
- 14 A No, they controlled me. I was abused.
- 15 Q You never beat your boyfriend?
- 16 A When he hit me I hit back, yes, sir.
- 17 Q And that includes nailing him with a gas cooker.
- 18 A With a what?
- 19 Q Gas cooker, a grill?
- 20 A I never hit with a gas cooker. I flipped it up upside
- 21 down on his porch, yes.
- 22 Q Did you teach that kind of behavior to your children that
- 23 if somebody acted out against them whether it was a man or a
- 24 woman that they needed to take care of business?
- 25 A I taught them to defend themselves but I also instilled

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1 in them not to hit women. I tried to instill that on them ---

2 Q Okay.

3 A --- because I was abused myself.

4 Q Sure, but, but ---

5 A And they, they was raised watching me get beat.

6 Q Sure, but Nicholas did beat Belinda, didn't he?

7 A Not that I know of. I never saw him hit her.

8 Q Nicholas never called you on the phone and told you that
9 he had beaten Belinda?

10 A He's called me and told me him and Belinda was having
11 problems with their drug habits and stuff like that and they
12 were having problems, yes. That was when I was in Kentucky
13 and that's before I come home. He wanted help with his, with
14 his drug problem and all the circumstances around it. He
15 wanted help, yes.

16 Q Great, thank you for all that information, but I don't
17 believe you answered my question. My question was did he call
18 you while you were in Kentucky and tell you he had beaten
19 Belinda?

20 A No, he didn't call me and tell me he had beat her, no.

21 Q Did not?

22 A No.

23 Q You were aware that at one point in time your mother,
24 Mrs. Ward, made arrangements for Belinda to have a job at Food
25 Lion.

1 A I don't know whether mom arranged that or not. I don't
2 have any knowledge of that.

3 Q You knew Belinda had a job at Food Lion.

4 A Yes, I knew she worked at the Food Lion.

5 Q You knew that she couldn't return there because she had
6 suffered a beating from your son, Nicholas, to the point where
7 her face was too messed up to go to work; isn't that true?

8 A No.

9 Q That never happened.

10 A That's not true. I'm not -- what you're saying, no, I
11 don't know that for a fact, no.

12 Q Okay, you lived in that house during that time period;
13 didn't you?

14 A Yes.

15 Q And if she did have physical injury on her face ---

16 A When she wasn't working at Food Lion. Wait a minute, no,
17 wait a minute, don't -- you asked me a question.

18 Q Sure, during that time now, if she had an injury on her
19 face because you were living with her you would have
20 seen it.

21 A Rephrase your question, please.

22 Q If during the time that -- you were living there during
23 the time that she was working at Food Lion; correct?

24 A I'm not sure whether I was still living with them at that
25 time when she was working at Food Lion or not.

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1 Q During the time that you were living there were you aware
2 at any time that there was a time that he beat her to the
3 point where she had visible injuries on her face?

4 A Not while I was living there, no.

5 Q Never, you never saw?

6 A Not while I was living there, no.

7 Q How about when you weren't living there.

8 A Not that I know of, no.

9 Q Belinda never complained about that to you?

10 A She complained they were having problems and when they
11 had problems it was all over drugs.

12 Q Okay, let me see if I can make my questions more clear to
13 you. Belinda never complained to you, not about drugs or drug
14 use, but beatings inflicted by your son, Nicholas, on her?

15 A She complained about their problems, but she never said
16 about beating, beating, no. They had physical contact I'm
17 sure.

18 Q She told you about beatings just not tremendous beatings,
19 is that what you're telling us?

20 A No, no, that's not what I'm saying.

21 Q So, I get you straight, what you're telling us is that
22 she ---

23 A They had confrontations.

24 Q --- let me, please, let me see if we can get this.

25 I will try not to talk when you talk and I would ask that you

1 not talk while I talk and I'll ask a question. Generally it
2 will be yes or no.

3 A Well, I'm trying to answer your question as best I can.

4 Q I think I was still talking again, but please answer the
5 question yes or no and if you feel compelled that you need to
6 explain your answer feel free to do so. Is that all right
7 with you?

8 A That's fine.

9 Q So, my question is, if I can get through with it, is was
10 there a time that Belinda spoke to you about any type of
11 physical violence inflicted upon her no matter what degree,
12 any physical violence at the hands of your son?

13 A They both had participated in it, yes.

14 THE COURT: The question, okay, maybe you did answer,
15 but the question was did she ever -- were you ever aware of
16 any ---

17 A They both spoke to me.

18 Q And Nicholas spoke to you about the fact that he had
19 previously beaten Belinda; isn't that true?

20 A No, he told me about confrontations they had whether it
21 be physical, mental, yes, confrontations, yes.

22 Q That were physical in nature inflicted by him to Belinda,
23 he spoke to you about that?

24 A Yeah, they both had physical contact, yes. I'm not going
25 to agree --

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- 1 Q That's okay. I'll move on.
- 2 A I'm not going to agree with the word beating, I'm sorry.
- 3 I was beat.
- 4 Q I said physical confrontation. I didn't say beating.
- 5 A You kept saying beatings is what I'm hearing.
- 6 Q Okay, we'll move, we'll move on.
- 7 A Thank you.
- 8 Q Great. The police came over to your house on January
- 9 30th of -- January 31st of 2006.
- 10 A Yes, sir.
- 11 Q Okay, and when the police came you were very much aware
- 12 why they were there, that they were there checking out
- 13 allegations that Nicholas had abducted or kidnapped Belinda.
- 14 You were aware of that; correct?
- 15 A That's what they informed me of, yes.
- 16 Q So, there's no question you knew why they were there?
- 17 A Excuse me?
- 18 Q No question in the world you knew why they were there.
- 19 A That's what they -- like you said it was an allegation,
- 20 yes.
- 21 Q Okay, now, when the police -- by the way, it was two
- 22 members of the Georgetown County Sheriff's Office, including
- 23 Dustin Morris here?
- 24 A Yes, sir.
- 25 Q Michael Thacker, who is here.

- 1 A Yes, sir, the second gentleman, yes, sir.
- 2 Q Okay, and three members of the Berkeley County Sheriff's
3 Office.
- 4 A Yes, sir.
- 5 Q And the Berkeley Sheriff's Office personnel asked you
6 very basic questions, your name and your date of birth.
- 7 A Yes, sir.
- 8 Q And you refused to give that information; isn't that
9 correct?
- 10 A Yes, sir.
- 11 Q Okay, to the point where they had to go around you to
12 your mom to find out who you were and what your date of birth
13 was.
- 14 A Yes, sir.
- 15 Q Okay, and the reason why that you refused to give that
16 information is because you knew that there was an active
17 warrant for you; isn't that true?
- 18 A Yes, sir.
- 19 Q So, on that day you intentionally had tried to deceive
20 the police as to who you were; correct?
- 21 A Yes, sir.
- 22 Q Okay, now, with this knowledge that they were there for a
23 kidnapping, allegations that Belinda was kidnapped by
24 Nicholas, tell me did you say one word to this gentleman here,
25 that gentleman there or any member of the Berkeley County

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1 Sheriff's Office about anything that you just testified to
2 these fine people on the jury?

3 A What are you referring to?

4 Q Did you say one bit of what you just testified to to
5 members of the Sheriff's Office, whether it be Georgetown or
6 Berkeley County about ---

7 A I don't understand your question.

8 Q All right, let me see if I can make it a little easier
9 then. You told our jury just moments ago that you saw
10 Belinda, it was your opinion that she was hung over or on
11 drugs or drunk, that they were hugging each other, that
12 everything was hunky dory; right?

13 A I didn't say it was hunky dory, no, sir, that's your
14 words.

15 Q Okay, everything was fine.

16 A I didn't say everything was fine.

17 Q How would you ---

18 A I said they were ---

19 Q --- characterize it?

20 A --- embracing each other.

21 Q All right, okay, that ---

22 A That doesn't mean they were embracing each other in a
23 loving like, "Oh nothing's wrong" way.

24 Q Okay.

25 A They were both emotional about their, their positions.

1 Q Okay, we'll take your characterization. Did you tell any
2 member of law enforcement any of that, one word of that?

3 A What are you -- I still don't understand what you're
4 trying to say.

5 Q Okay.

6 A You're confusing. I ---

7 Q Sure. We'll make it easy. Did you tell them that you
8 saw them embracing?

9 A They didn't ask me any of that.

10 Q I didn't ask you that. Did you tell the police that you
11 saw them embracing?

12 A No, they didn't ask me.

13 Q Did you tell the police, did you tell the police that you
14 saw her walk around free as a bird, no confinement? Did you
15 tell them anything about that?

16 A That wasn't, that wasn't why they were there. They were
17 there for searching.

18 Q Yes or no, ma'am. Did you tell them anything about that?

19 A No.

20 Q Did you tell anything about the fact that you thought she
21 was high or hung over?

22 A No.

23 Q Did you tell -- by the way when they were searching
24 you're aware that they found duct tape; correct?

25 A They said they did, yeah, but I didn't see them do it.

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1 Q Okay, you saw them searching in the red truck?

2 A Yeah, partially, but -- one of the Berkeley County
3 Policeman kept trying to move me away from the truck while
4 they were searching ---

5 Q Right, because you ---

6 A --- because my father asked me to watch while they
7 searched his truck because he didn't want anything planted in
8 his truck.

9 Q Okay, the truck. They asked you to step back because you
10 were interfering with what they were doing; isn't that true?

11 A No, sir, I wasn't interfering. I was standing and
12 looking.

13 Q That's not your truck; is it?

14 A Pardon?

15 Q That's not your truck; is it?

16 A My father's truck, he's disabled and he wasn't able to
17 get out there and do it himself. That's why he asked me to do
18 it.

19 Q Just so we're clear, are you suggesting in any way -- by
20 the way you're aware of the evidence in this case, including
21 the duct tape from the truck and the room; correct?

22 A I'm aware of the paperwork. I guess I ---

23 Q Well, all right, you're not saying that you haven't
24 discussed this matter with Mr. Goude or your son, your ---

25 A No, yes.

1 Q You've just -- you've had meetings, have you not, with
2 Mr. Goude ---

3 A Right, yes.

4 Q --- your son, your mother; correct?

5 A Yes.

6 Q Roland, your nephew.

7 A Yes, yes.

8 Q All of you have met together and talked about what you
9 were going to testify to and what the evidence was against
10 Nicholas; right?

11 A We discussed, we discussed what, what the evidence was
12 but not, not to my testimony.

13 Q Mr. Goude never ---

14 A Well, I --- you're ---

15 Q --- you're telling our jury ---

16 A --- you know, you're confusing me. You don't twist my
17 words, please.

18 Q All right, well, let me see, are you telling our jury
19 that you never discussed with Mr. Goude what you would be
20 saying on this witness stand, that it was surprise to him
21 today, even though he was asking the questions, as to your
22 answers ---

23 A Yes, I ---

24 Q --- he had never heard those before.

25 A Yes, I did, yes, we did discuss that.

1 Q Okay, so, you did, you met with him in the company of
2 those other people to discuss and prepare your testimony;
3 isn't that true?

4 A To prepare my testimony but not to tell me what to say,
5 just that what I was going to be subject to in the courtroom.

6 Q I got you. Each and every one of you heard what the
7 other was going to say; correct?

8 A I wouldn't answer yes or no to that question.

9 Q All right, did you discuss with Mr. Goude in the presence
10 of your mother, your son, your nephew, what you were going to
11 testify here today, yes or no?

12 A Like I said, I wouldn't answer yes or no to that because
13 we didn't discuss exactly what I would say if I was asked a
14 certain specific question.

15 Q You all were in the room together?

16 A Yes, sir.

17 Q On more than one occasion; true?

18 A All of us?

19 Q Yes.

20 A Not on, not on -- just one occasion all of us was
21 together.

22 Q And on other occasions some of you together?

23 A Yes, sir.

24 Q And your son, I take it you have spoken to your son about
25 what happened that day.

1 A Yes, sir.

2 Q Prior to you waking up and being involved.

3 A Yes, sir.

4 Q Okay, and he told you that he went to her house and he

5 put tape on her ankles; didn't he?

6 A Yes, sir.

7 Q And he told you that he put tape on her hands.

8 A Yes, sir.

9 Q And that he carried her literally out of her house and to

10 the truck.

11 A Yes, sir.

12 Q And he told you that he dropped her.

13 A No, sir.

14 Q Didn't tell you that?

15 A No, sir, not that I can remember.

16 Q Okay, did he tell you that he had kept her at least for a

17 while in the small apartment.

18 A No, sir.

19 Q Never told you that?

20 A No, sir.

21 Q Did he tell you that -- were you aware or did he tell you

22 that he was obsessed with her, that he was pining for her,

23 that he was not eating or sleeping because of how he felt

24 about Belinda? Did he relate that to you either during when

25 it was happening or afterwards? Did he tell you any of that?

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1 A He told me he loved her dearly, yes, didn't want to lose
2 her but he loved her and wanted to work it out with her, work
3 out their problems, but he wanted, he wanted ---

4 Q Did he even say ---

5 A --- the reason they was having all these confrontations
6 was over the cocaine.

7 MR. MODICA: Your Honor, objection as non-responsive.

8 THE COURT: Well, just go ahead. There's been plenty
9 of testimony about that already.

10 BY MR. MODICA:

11 Q By the way, you're a cocaine user; aren't you?

12 A I'm a recovering crack addict, yes.

13 Q You skipped over cocaine and went straight to crack or
14 did you use ---

15 A No, sir, started out with crack, I mean, cocaine and then
16 it went to crack, which crack is a form of cocaine.

17 Q Did he tell you words to the effect that even if it meant
18 going to jail he was going to have her or anything like that?

19 A No, sir.

20 Q Did he tell you that he told her that?

21 A Not that I can recollect, no.

22 Q Now, it was your testimony a short time ago that when
23 this incident went down on January 29th that Belinda was
24 living in Summerville; correct? Isn't that what you testified
25 to our jury?

1 A She was -- she had just moved where she had -- there was
2 a period of time where she was back and forth between mom's
3 house and Georgetown.

4 Q Okay, my question to you is did you testify to our jury
5 that before this incident happened that weekend that she was
6 living in Summerville. Did you testify to that?

7 A I said she was either staying at her aunt Joan's or Joyce
8 Ann's or she was staying with her mom during that time. She
9 was in between coming back and forth from Georgetown and
10 Summerville during that time. She, she come from Georgetown
11 on that weekend with her mother's truck and her mom did not
12 know that she was seeing Nicholas then.

13 Q Was this your testimony when the victim left ---

14 A She was worried about that.

15 Q --- when the victim left she said her children were with
16 her mother and then partied all weekend. She lived in
17 Summerville. Was that your testimony?

18 A I guess. That's the way you got it worded down there.

19 Q By the way, Belinda looked disheveled and out of it;
20 didn't she?

21 A She looked like she normally looks when -- after a
22 weekend of partying.

23 Q I'm not sure you answered my question. So, I'll ask it
24 again. She looked disheveled.

25 A I don't understand that word.

Sherry Parker - Cross by State

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- 1 Q Do you know what I mean by disheveled?
- 2 A You'll have to ---
- 3 Q Her hair was messed up?
- 4 A Yes.
- 5 Q She didn't look right, she didn't look herself?
- 6 A She looked like she was hung over.
- 7 Q Now, there was a period of time though when she lived
- 8 close to her or with her aunt that that was only about 10
- 9 miles from where you lived.
- 10 A Yes, sir.
- 11 Q And there was occasion in October that you came to see
- 12 her, October of '06 that you came to see her.
- 13 A Yes, sir.
- 14 Q At her house.
- 15 A Yes, sir. She also come and picked me up in October from
- 16 my house.
- 17 THE COURT: Well, just, just, let's -- we'll get
- 18 through a lot quicker if you answer the questions he asks.
- 19 A Oh, okay, I apologize.
- 20 Q You came to her bedroom window; correct?
- 21 A Yes.
- 22 Q Unannounced?
- 23 A Yes.
- 24 Q And you said, "You better call Nick Parker's attorney
- 25 and drop things or everything would come down," or words to

1 that effect.

2 A No, sir, I did not say that.

3 Q You didn't say anything like that.

4 A I asked her because she had been coming ---

5 Q I'm not ---

6 A No, no, sir, no, sir.

7 Q You didn't say that. Thank you. I have nothing
8 further.

9 THE COURT: All redirect.

10 REDIRECT EXAMINATION

11 BY MR. GOUDE:

12 Q The prosecutor asked you did the prosecuting witness
13 looked disheveled or whatever it was that morning. Had you
14 partied with the prosecuting witness prior -- on prior
15 occasions during the two years that she lived with your son?

16 A Yes, sir, on many occasions.

17 Q Had you seen the way she looked the next morning?

18 MR. MODICA: Your Honor, I'm going to object. She
19 stated ---

20 THE COURT: Well, she's already testified to that.
21 I'll allow the question.

22 MR. MODICA: Well, he's going over those again. So,
23 I'm going to object.

24 THE COURT: Well, just, I mean, she's already
25 testified to it, but let's, let's move on. Go ahead. I'll

1 let you ask that question but let's don't go over it and over
2 and over.

3 Q On many occasions when you and she had partied did you
4 have occasion to see her the next morning and see how she
5 looked?

6 A Yes, sir.

7 Q This Sunday morning, January the 29th, 2006 did she look
8 similar that morning to the other mornings you had seen her
9 after a night of partying?

10 A Yes, sir.

11 Q That's all the questions I have of this witness, Judge,
12 other than the proffer that we talked about.

13 THE COURT: All right, any recross?

14 MR. MODICA: I have nothing further.

15 THE COURT: All right, you can step down. Don't
16 leave. You can step down, but go back to where you were in
17 the room.

18 All right, call your next witness.

19 MR. GOUDE: Can we do that proffer now, Judge?

20 THE COURT: Well, let's let her stick around and
21 let's -- it's 5:30 I'd like to -- or close to it. I'd like to
22 get one more witness and utilize the jury while I've got them
23 here.

24 MR. GOUDE: Judge, the only other witness I've got is
25 one more who is Shirley Ward who will probably be a fairly

1 long witness.

2 THE COURT: All right, just have a seat out there,
3 please, ma'am.

4 A Thank you.

5 THE COURT: All right, members of the jury panel if
6 we've got another long witness and arguments and charge we
7 won't be able to finish today. So, it is almost 5:30 and we
8 have at least one legal matter to take up with the attorneys.
9 So, we'll stop for the day and start back at 9:30. Keep in
10 mind that you're still not positioned to make up your mind,
11 still not positioned to discuss the case among yourselves and
12 you're not to let anyone discuss this case with you or let
13 yourself be exposed to anything if there is anything in the
14 news. So, have a pleasant evening and we'll see you in the
15 morning at 9:30.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right, Ms. Parker, if you'll come
19 back up you're still under oath. Come back up and have a
20 seat.

21 You may proceed.

22 MR. GOUDE: Judge, the two questions that I would ask
23 her -- the witness is.

24 PROFFER

25 BY MR. GOUDE:

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1 Q Ms. Parker, at some point around October or so of 2005
2 either while they were in, still in Summer Creek or whatever
3 during that time period did you and the prosecution witness
4 have a conversation, did she tell you that she was worried
5 about what her mother thought about her living with Nicholas
6 and you told her that, "If you're worried about your mamma
7 just tell her" ---

8 MR. MODICA: Objection.

9 THE COURT: No, he ---

10 MR. MODICA: Is he testifying or is she?

11 THE COURT: Well, it's a leading question, but it's a
12 proffer. Why don't you just ask her -- instead of leading
13 her, ask her if they had this conversation; and if so, the
14 nature of it. Not -- don't tell her what the answer is.
15 You've got to ask a question.

16 Q Did you tell the prosecution witness what to tell her
17 mamma if she was worried about her mamma catching her and
18 Nicholas together?

19 A Well, sir, the weekend before she was worried about her
20 mother finding out about her being with Nicholas and I said,
21 "Well, if you're really worried about it, Belinda, just tell
22 her he kidnapped you," exact words quote unquote.

23 Q And this was the weekend before this incident occurred?

24 A Yes, sir.

25 Q Where was you all when that conversation took place?

1 A In my mother's kitchen in the big house.

2 THE COURT: I'm sorry. I missed something. I
3 thought you had started out with October 5th at Summer Creek
4 and then you said the weekend before this occurred.

5 MR. GOUDE: I said that, but the witness knows better
6 than me when it happened, Judge. So, she corrected me.

7 A It was the weekend, it was the weekend before the incident
8 happened. October is -- Debbie died October 5th, and ---

9 THE COURT: Okay, we're moving on. Ask your next
10 questions.

11 Q The next question was at some time around October of '06
12 after Nicholas was in jail did you talk with the prosecution
13 witness about the charges and the prosecution witness tell you
14 what would happen to her if she changed her story or
15 something? Did she talk with the prosecutors or whatever, she
16 said she had or whatever?

17 A We discussed that she didn't feel like -- she had told me
18 that she didn't feel like Nicholas had been in jail long
19 enough for what they had went through and that she was going
20 to try and talk to the Solicitor and see what she could do to
21 help him out to get out of jail and get all this behind them,
22 and then come -- and then when it come to his bond she did
23 just the total opposite. That's why I quit having
24 communication with her at that time.

25 Q Did she tell you something about what would happen to her

1 if she changed her story?

2 A Yes, sir, she told me that the Solicitor had told her
3 that if she had changed her story that they could prosecute
4 her and put her in jail for 18 months for filing a false
5 police report and she wasn't going to lose her kids for 18
6 months.

7 MR. GOUDE: That was the two question basically that I
8 had that I wanted to ask, Judge, goes to the motive.
9 Basically the last was the same thing we had asked ---

10 THE COURT: All right, I understand that.

11 MR. GOUDE: --- and the other one about kidnapping is
12 -- that's what this lady, the witness told me she said.

13 THE COURT: Well, I understand that, but it's not
14 relevant. I mean, this isn't fabricated. There's no evidence
15 whatsoever that this is fabricated, I mean, the -- your client
16 has admitted that he did all this. The question is whether
17 the jury is going to consider it to be manslaughter [sic], but
18 I don't think it's relevant that he -- she -- this lady
19 coached her to fabricate a kidnapping. I don't find it
20 relevant. All right, what else?

21 MR. GOUDE: That's all I have, Judge.

22 THE COURT: All right, what about this -- I did let
23 in earlier the -- what the prosecution would do if she changed
24 her story. You have any questions on that?

25 MR. MODICA: No, Your Honor, but to argue about that,

1 first of all, it's improper because counsel never asked her,
2 well, she testified about that. So, it's an improper attempt
3 to impeach her because you need to ask her that question.
4 That's the first thing.

5 The second thing, it's calling for hearsay upon hearsay
6 which is what I told her, allegedly what a prosecutor, me,
7 told her. So, it's asking for hearsay upon hearsay. So, for
8 both of those reasons it should be disallowed.

9 THE COURT: All right, I'm not going to allow it.

10 MR. MODICA: And over my objection that kind of stuff
11 has already come in in anyway through another witness.

12 THE COURT: I'm not going to allow either one of
13 these questions. All right, you can step back down. Thank
14 you.

15 A Thank you, Your Honor.

16 All right, we've got only one witness left. That's
17 Shirley Ward I understand.

18 MR. GOUDE: Yes, sir, that's correct.

19 THE COURT: All right, you all want to take a look at
20 the charges real quick before we stop for the evening or do
21 you want to do that in the morning?

22 MR. GOUDE: Why don't we do it in the morning?

23 THE COURT: Well, we're getting toward the end.

24 We'll do that, but I've given everybody or my clerk has my
25 request to charge. Either side have any additional requests?

1 The State has already given me one. Mr. Goude, do you have
2 any requests?

3 MR. GOUDE: I've got some things I have copied out of
4 Ervin, Judge, that I will pass up to the Court.

5 THE COURT: All right, have you looked at my charge?

6 MR. GOUDE: Yes, sir, the one on the kidnapping looks
7 fine to me. I had not made it through all the rest of them.

8 THE COURT: All right, well, take a look at them but
9 I've got criminal intent, and I've got -- I think it looks
10 like I've got everything you handed up, but we'll double-
11 check. All right, we'll start back at 9:30 in the morning.

12 MR. MODICA: Your Honor, may I be heard briefly on the
13 instructions?

14 THE COURT: Yes, sir.

15 MR. MODICA: In regard to reasonable doubt I assume
16 that you're going to do both, the alternative charge as well
17 as ---

18 THE COURT: I do both.

19 MR. MODICA: Okay, secondly, Your Honor, I had raised
20 the issue about not including burglary second because I
21 indicated there was no reasonable view of the evidence. I
22 would now reaffirm that given the Defendant's own testimony in
23 which I specifically asked him, "Did you cause these physical
24 injuries to her," to which he said yes, thereby eliminating
25 the issue. So, there is no reasonable view of the evidence to

1 charge anything less than burglary first.

2 THE COURT: All right, what do you have to say about
3 that, Mr. Goude?

4 MR. GOUDE: Well, I have got down to request burglary
5 second as a lesser included offense of burglary first on the
6 issues, but as I understand it the charges are to be done
7 after the parties have rested the case.

8 THE COURT: Well, they are and we're not -- I'm not
9 going to finalize. It's helping me think. If you don't want
10 to help me think that's fine. I'm just ---

11 MR. GOUDE: I'd rather wait until after ---

12 THE COURT: I'll think on my own.

13 MR. GOUDE: I'd rather wait and help you think after

14 ---

15 THE COURT: Okay, all right, I just, just ---

16 MR. GOUDE: --- the ending, Judge.

17 THE COURT: --- looking for a little help.

18 MR. MODICA: Your Honor, I don't know if you're going
19 to incorporate what the State had suggested on the
20 temporariness of or the timeliness of the kidnapping.

21 THE COURT: That one sentence.

22 MR. MODICA: Yes.

23 THE COURT: Well, we're going to take care of all
24 that. I'm inclined to do it but I'm going to hear from Mr.
25 Goude first on that.

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1 MR. MODICA: Yes, sir.

2 THE COURT: All right.

3 MR. MODICA: Thank you.

4 THE COURT: See you at 9:30 in the morning.

5 MR. MODICA: Yes, sir.

6 ***** OFF THE RECORD *****

7 (On the record, February 2, 2007.)

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: The State ready? The State ready?

11 MR. MODICA: Can I just have a moment, Your Honor?

12 THE COURT: The Defense ready?

13 MR. GOUDE: Yes, Your Honor.

14 THE COURT: Mr. Goude, just one minute. I don't see
15 Mr. Colvin. Is he around?

16 MR. GOUDE: He was in the hallway when I came in,
17 Judge.

18 THE COURT: Okay, all right.

19 MR. MODICA: We're ready, Your Honor. She'll be here
20 in just a second. They can come out if they like.

21 THE COURT: Bring in the jury.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: Good morning. Mr. Goude.

25 MR. GOUDE: We would call Shirley Ward to the stand,

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1 Your Honor.

2 THE COURT: Please come up and be sworn.

3 MR. GOUDE: He was in the hallway a while ago.

4 MR. MODICA: Your Honor, Your Honor, her attorney is
5 not present.

6 THE COURT: Let's go ahead. Would you check and see
7 if Mr. Colvin is out and would you check and see if Mr. Colvin
8 is out in the hall and ask him to just come in and have a
9 seat?

10 Go ahead.

11 AT THIS TIME SHIRLEY WARD WAS CALLED TO THE STAND, DULY SWORN
12 BY THE CLERK AND TESTIFIED AS FOLLOWS:

13 THE CLERK: Please be seated and state your name for
14 the record, your full name.

15 MS. WARD: Shirley S. Ward.

16 THE COURT: All right, for the record, Mr. Colvin is
17 present.

18 DIRECT EXAMINATION

19 BY MR. GOUDE:

20 Q Ms. Ward, if you would tell the jury your full legal name
21 please.

22 A Shirley Silvers Ward.

23 Q And what is your address? Where do you live?

24 A [REDACTED], Summerville, South Carolina, 29483.

25 Q Now, I notice you're holding your hand at your throat and

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- 1 you're talking kind of hoarse. What's wrong with you?
- 2 A I've had a ---
- 3 Q You've had a what?
- 4 A A laryngectomy and they took my voice box and the only
- 5 way that I can talk is I push air up out my lung through this
- 6 little tube.
- 7 Q Can you breath and talk at the same time?
- 8 A Well, I guess.
- 9 Q Okay, every time you talk you've got to push that thing
- 10 in your throat?
- 11 A (Indicates affirmatively.)
- 12 Q All right, now, what is your age, please?
- 13 A 68.
- 14 Q And are you related to the Defendant, Nicholas Parker?
- 15 A Yes, sir, I'm his grandmother.
- 16 Q And are you his maternal or paternal grandmother?
- 17 A I'm his mom's mom.
- 18 Q Okay, you're his mother's mother and your daughter's name
- 19 is what?
- 20 A Sherry W. Parker.
- 21 Q Now, are you married at the present time?
- 22 A Yes, sir.
- 23 Q What is your husband's name?
- 24 A James O. Ward, Sr.
- 25 Q Now, how old is Mr. Ward?

1 A 71.

2 Q You and he still live in the same house together?

3 A Yes, sir. He's disabled. He rides around in a little
4 scooter and sleeps on the couch.

5 Q How long have you all been married?

6 A 54 years this year.

7 Q How many children do you all have?

8 A Four.

9 Q Back in January of 2006 a year ago, the month that this
10 stuff happened that we're all in court about who was living in
11 your house at that time?

12 A They were living there.

13 Q Who was living in your house? Name everybody that was
14 living in your house at that time including yourself.

15 A Okay, my husband and me and my daughter and my grandson
16 and his girlfriend, Belinda.

17 Q Give their names.

18 A Oh, okay.

19 Q Who was your -- which daughter was staying there with
20 you?

21 A Sherry W. Parker, that's the only daughter I got. I got
22 three boys and one girl.

23 Q All right, Sherry was living there, you and your husband
24 and who else was living there?

25 A Her two sons.

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1 Q What's their names?

2 A Nicholas Lee Parker and Joshua James Parker.

3 Q And Nicholas is the man I'm representing in this case?

4 A Yes, sir.

5 Q And Josh, how old is he?

6 A He is 20, God I don't, 2.

7 Q Did you say that -- was Josh's girlfriend living there
8 with you all at that time?

9 A Yes, sir, they have one child and then she was pregnant
10 but she's got another one now, but she's gone.

11 Q All right, what was her name?

12 A Deborah Vacruzi.

13 Q When you say she's gone, what do you mean by that?

14 A She got killed in October, October the 5th, 19 -- I mean,
15 2006.

16 Q Okay, how long has your husband been disabled?

17 A Since '81.

18 Q Now, some of the witnesses have testified to how many --
19 how many bedrooms do you have in your house?

20 A Three.

21 Q And at that time, January of 2006, who was staying in
22 which -- who was living and sleeping in which bedroom?

23 A Well, as you come in my house there is a foyer and you go
24 to your right and there's a little hallway about three by six
25 and on the left side is the bunk bed where my daughter was

1 sleeping, yeah, and then right across the hall was where Nick
2 and Belinda slept and then the bathroom and then on my -- to
3 my right is the bedroom where Josh and Debbie and the baby
4 slept.

5 Q Before this date when all this stuff happened, before
6 January the 29th, 2006, how long had you known the prosecuting
7 witness, Belinda Mitchum?

8 A Well, I knowed her ever since she was about four or five.

9 Q Was she born and raised in that area, Summerville?

10 A Yes, sir; yes, sir.

11 Q Does the prosecuting witness have other relatives that
12 live in that area?

13 A Her daddy and her mamma lived -- they call it the Hill
14 but it's about 10, 6, 7 miles from the house.

15 Q Were there other relatives of the prosecuting witness
16 that lives over there now?

17 A Well, her aunt, I think, or her cousin or somebody. I
18 don't know. I know they're some kind of kin to them because
19 they live over there.

20 Q Does her father's, the prosecution witness father's
21 family live over in that area?

22 A Well, her father has passed away. He passed away about
23 two or three years ago and then, well, him and her mother
24 divorced and, I mean, she went with a guy, Elliott Mann.

25 Q My question was does the prosecution witness's father's

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1 family, like his brothers, cousins, sisters, grandma, aunts,
2 do those people live in the Summerville area?

3 A Yes, sir.

4 Q Did the prosecution witness go to school over there in
5 the Summerville area?

6 A I think so.

7 Q At some point did the prosecution witness start living
8 there in your house as Nicholas's girlfriend?

9 A Yes, sir.

10 Q Do you know about what year that was or about how long
11 before January of '06 she first started staying there in your
12 house?

13 A 2004, I think.

14 Q And did they share a bedroom there in your house?

15 A Yes, sir.

16 Q While they were there did the prosecution witness did she
17 work outside the home? Did she have a regular job that she
18 would go to during the day?

19 A Off and on.

20 Q What kind of jobs did she have? Do you remember any of
21 the employers she worked for?

22 A She worked for the, oh, boy ---

23 Q Just relax and take your time. You're not under any
24 pressure or anything. Just tell what, what you know.

25 A Shoney's, I think, well, it was right across in

1 Summerville on Main Street.

2 Q And that's while she was staying at your house?

3 A Yes, sir.

4 Q Did your grandson Nicholas, did he have a job outside the
5 home while they were staying there in your house?

6 A Yes, sir. He worked for a body man, Leonard Long. He
7 worked on cars and stuff.

8 Q Did he have another job? Did he work for anybody else
9 other than the body shop?

10 A My son, he was a mechanic. He works over at Mt. Pleasant.

11 Q Does he have a --

12 A No, he was working down at Besops [spelled phonetically]
13 about three miles from the house. That's before he got that
14 other job.

15 Q At some point after they started staying with you all did
16 they move out and move into the Summer Creek mobile home park?

17 A Yes, sir.

18 Q And do you know, remember approximately what year that
19 was that they moved out of your house into the mobile home
20 park?

21 A 2005, I think.

22 Q Do you know approximately when they stayed over there?

23 A About three or four months but I don't remember exactly
24 when. It was in school because their two kids was going to
25 school.

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1 Q When they were staying at your house with you from '04 to
2 '05 would the prosecution witness, the girl, Belinda Mitchum
3 would she ever come home to Georgetown or come to Georgetown
4 County where her mother lived to visit her mamma?

5 A Not that I know of.

6 Q Did her mamma ever go to Summerville where she was
7 staying, the girl was staying with you and visit the girl and
8 the children there?

9 A Once in a while.

10 Q Did the kids go to school in Summerville while the
11 prosecution witness and her children were living with you in
12 your house?

13 A They went to Berkeley, Whitesville School the little girl
14 did, BM

15 Q When they moved out and moved into the mobile home in
16 Summer Creek did you ever visit them there at the mobile home?

17 A A couple of times.

18 Q Did the prosecution witness and your grandson Nicholas
19 ever come to the mobile home park and visit you at your house
20 while they were living in Summer Creek?

21 A Yes, sir.

22 Q Do you remember approximately when they moved out of the
23 Summer Creek mobile home park?

24 A It was before 2000 and -- I don't remember. Anyway, it
25 was right before Christmas.

1 Q Right before Christmas and since all this incident
2 happened in January of '06 it would have been Christmas of
3 '05, sometime right before Christmas of '05?

4 A '05, that's right.

5 Q All right, now, when they moved out did you do anything
6 about any of her property that was left in the mobile home in
7 Summer Creek?

8 A Me and my daughter went over there and got two or either
9 three truckloads of junk and they was going to leave and throw
10 it, you know, let the people have, the junk man. I said,
11 "No, you ain't." I'm a pack rat. So, I went over there and
12 I went and got it, brought it to the house and stored it in
13 the little house.

14 Q And how did you pack up the stuff that was left over
15 there in the Summer Creek trailer park? What kind of
16 containers did you put it in?

17 A Garbage bags, black bags and boxes.

18 Q And how did you close the boxes or keep the boxes closed,
19 the cardboard boxes?

20 A Well, we just closed them because we was putting all the
21 stuff in the back of the truck but now they had some boxes
22 already packed up that we brought over there, too.

23 Q And any of the boxes that they had packed up what was
24 keeping the boxes closed?

25 A They had tape on them.

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1 Q Was that duct tape?

2 A Silver tape, yeah.

3 Q Silver gray duct tape, approximately how many boxes and
4 Things did you all, boxes I'll say, about how many boxes,
5 cardboard boxes of stuff did you bring from the mobile home
6 park to your house?

7 A I don't know. I know it was two or three truckloads in
8 the back of the truck.

9 Q That was your red Dodge truck?

10 A Yes, sir.

11 Q And you say you brought garbage bags, too. Is that the
12 white kitchen garbage bags or the black construction, the
13 black construction garbage bags?

14 A Black, black ones, yes, sir.

15 Q And do you remember approximately how many garbage bags
16 of her stuff did you bring?

17 A No, sir.

18 Q Just roughly was it like one or two, a dozen, 20?

19 A Probably about a dozen.

20 Q Where did you all put that stuff?

21 A In the little house. We just put it back there in the
22 back bedroom.

23 Q And how long has it been since anyone has actually lived
24 in that little house that you all call it?

25 A About seven or eight years, even longer probably.

1 Q And what do you all use it for now?

2 A More or less storage for everybody.

3 Q Is that what it was, is that what it was being used for
4 in January of '06?

5 A Yes, sir.

6 Q And in what section of the little house did you put the
7 boxes and garbage bags that you brought from the mobile home
8 park?

9 A In the bedroom in the little house. It's a one-bedroom
10 apartment now.

11 Q When you put that stuff in the little house in October,
12 November, December of '05 were there already other boxes or
13 stored stuff in that little house belonging to other members
14 of the family other than the stuff you brought from Summer
15 Creek?

16 A Yes, sir.

17 Q And how was that stuff stored, what kind of containers
18 was that stuff stored in?

19 A Well, it's in boxes and bags and furniture, it was in the
20 living room part.

21 Q That's cardboard boxes?

22 A Yes, sir.

23 Q All right, did you, did you know when or when Nicholas
24 and the prosecution witness moved from the Summer Creek mobile
25 home park to Georgetown County did you help them move to

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1 Georgetown in any way?

2 A No, sir, they went and well, I guess I didn't help them
3 move to Georgetown but I picked their stuff up and took it to
4 the house. They went and moved all their other stuff that
5 they wanted to take with a U-haul truck.

6 Q Did you ever visit them while they were staying in the
7 trailer in BB Smith's trailer park here in Georgetown County?
8 Had you come down to that trailer before January the 29th of
9 '06?

10 A Yeah, a couple of times I think.

11 Q And why had you come down to BB Smith's trailer park?

12 A Well, I think the first time -- I don't know. I know I
13 remember the second time I come down and got him and her and
14 the two kids and took them back to my house on account they
15 had got in an argument with her mamma or something.

16 Q All right, now, after they moved to the BB Smith trailer
17 park, how long after that was it before either of them or both
18 of them came back to your house and started staying with you?

19 A About a week or two weeks at the most.

20 Q And who was it that came first and started staying with
21 you from BB Smith's trailer park?

22 A Both of them, I think, I really, but I don't know for
23 sure, but I'm almost certain both of them. I went up there
24 and got him and Belinda and the two kids and some clothes. It
25 was right before Christmas, I believe.

1 Q And they started staying with you again, and they stayed
2 with you up until, up -- when did they, when did the girl stop
3 staying with you at your house after she moved back in with
4 you?

5 A I think it was the 17th of January that same month that
6 we got charged with all this mess was -- I took her and my
7 daughter to the mental health in Moncks Corner, okay, and her
8 daughter BM and the little boy MM was staying with her
9 mamma in Georgetown because my husband had done said they got
10 two weeks, said that's all they can stay here.

11 MR. MODICA: Your Honor, objection.

12 THE COURT: Yeah, I sustain the objection. You can't
13 go into what your husband said. He'll have to testify to
14 that.

15 A Oh, okay, oh, okay, but anyway I brought them, I mean,
16 well, I don't even know where I was at. Where was I at?

17 Q You were taking the prosecution witness to mental health.

18 A Oh, yeah, and I took them to mental health because BM
19 was calling Belinda.

20 MR. MODICA: Objection.

21 THE COURT: I didn't hear what, what did she ---

22 MR. MODICA: BM was calling Belinda.

23 THE COURT: All right.

24 A I can't do that either?

25 THE COURT: No, don't go into that. Just ---

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1 A Oh, okay, anyway, I took them to mental health
2 and when Sherry went back in the back I took Belinda to meet
3 her mamma because the week before that I had took the kids
4 down there to meet her mamma to stay with her mamma on account
5 of the school and all because there wasn't no way I was going
6 to do all that.

7 Q Do all of what?

8 A I took BM to Whitesville every morning. I'd get up
9 and walk that kid out to the bus stop. In the evening I'd go
10 out there and wait on her and my husband said I couldn't do
11 that no more. So, Belinda decided to leave the kids with her
12 mamma and then BM was calling talking about, "I" ---

13 MR. MODICA: Objection.

14 THE COURT: Yeah, let's don't go into what somebody
15 else was calling and talking about.

16 Q All right, so, the day the prosecution witness moved out
17 you took her to mental health and where was that, what town
18 was that in?

19 A Moncks Corner.

20 Q How did she get from there to Georgetown County?

21 A Well, her mamma was at McDonald's. I took her around to
22 McDonald's and got her there, took her there and she said,
23 "Well, tell Nick I'll call him, and tell him I love him," and
24 I said, "All right," and she went on back with her mamma.

25 Q How, how did the mamma -- how did the prosecution

1 witness's mamma know to meet you all there at McDonald's?

2 A Because Belinda had called her, because her little girl
3 had called her.

4 MR. MODICA: Objection.

5 THE COURT: Wait a minute. I thought she said she
6 had called her.

7 MR. MODICA: She said Belinda had called because the
8 daughter had called.

9 THE COURT: All right, I sustain the objection.

10 A Okay.

11 Q Where, where was the prosecution witness at when she
12 called her mamma to come?

13 A At the house.

14 Q At your house?

15 A I guess, yeah.

16 Q Why do you say you guess?

17 A Because, I mean, that's the only phone she had access to,
18 I guess. She didn't have no cell phone or nothing.

19 Q All right, ma'am, and so, did you tell Nicholas what the
20 prosecution witness had told you to tell him?

21 A Yes, sir.

22 Q All right, now that was approximately January the 17th
23 you said.

24 A Yes, sir, it was on a Tuesday.

25 Q How can you remember that date so well?

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- 1 A That's my daughter's birthday.
- 2 Q Is that right?
- 3 A The 17th of September and the 17th of January. It's all
- 4 related. Then the 22nd is my youngest son's birthday. August
- 5 the 22nd, that's when Belinda come back down there with her
- 6 mom's car and saw Nicholas.
- 7 Q January the 22nd would have been what date of '06?
- 8 A Sunday, I think, Sunday, Sunday.
- 9 Q All right, now, you say after the prosecution witness
- 10 left on January the 17th, which was Tuesday, the prosecution
- 11 witness came back to your house and saw Nicholas?
- 12 A Yes, sir.
- 13 Q And how many times did that occur?
- 14 A Oh, boy, I don't remember. I don't know if it was before
- 15 all this happened or after. It was, it was that time, about
- 16 two or three times because she brought her brother's truck
- 17 down there one time.
- 18 Q All right, now, let's go to the morning when all this
- 19 stuff happened, Sunday morning, January the 29th, 2006. I
- 20 will show you the calendar again.
- 21 A Yeah, it was on Sunday.
- 22 Q That was.
- 23 A Sunday.
- 24 Q It was Sunday?
- 25 A Yes.

1 Q All right, now, in the house where do you and your
2 husband sleep?

3 A We sleep in the living room.

4 Q And do you all have a bed in the living room?

5 A Well, we've got two couches in there. He sleeps on one
6 and I sleep on one because he can't get back to the bedroom
7 and all and he's got a potty chair and all there.

8 Q Okay, all right, now, that morning, Sunday, January the
9 29th, 2006, what happened the first thing that you remember
10 that morning?

11 A Well, I was woke by my grandson and he had said Belinda
12 had called and wanted me to bring her stuff up there to the
13 trailer, the one stuff that I had in the little house and I
14 told my grandson, I said, "Well, fine." I went out there
15 and then I looked and I seen all that junk. I didn't know
16 what all Belinda wanted. So, I said, "Go in there and call
17 Belinda and ask her, see if she wants to come down here. Let
18 me go pick her up, bring her down her and she can
19 load up the truck with what she wants," and that's what we
20 did.

21 Q Well, why didn't you just -- and so, it was who -- it was
22 your idea to come to Georgetown?

23 A Yes, sir. Well, it was my idea to come get Belinda and
24 bring her to the house to get the stuff, yeah.

25 Q Why didn't you just bring all of the stuff that was there

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1 and just take it to her and let her do with it what she wanted
2 to do with it?

3 A The truck wouldn't hold it and she was just -- well, some
4 of the stuff she didn't want anyway.

5 Q Why couldn't she have just thrown it away and you just
6 brought it all to her and she wanted to throw it away she
7 could?

8 A They was going to over there at the other trailer and
9 like I said before I'm a pack rat and I have yard sales and
10 all and the stuff was too good to just throw out in the
11 garbage.

12 Q Well, what she didn't want you were going to keep and
13 sell at a yard sale?

14 A Oh, yes, sell it in a yard sale, youngins toys and all
15 was in that stuff.

16 Q All right, and do you remember approximately what time it
17 was in the morning when Nicholas woke you up?

18 A I thought it was about 6, 6:30. I don't know. It was
19 daylight.

20 Q And after you told him to tell her that what did he
21 tell you she said?

22 A He came back in there and told me that she said, yeah,
23 just come on up there and get her and she'd come pick out the
24 stuff she wanted.

25 Q And so, is that what you all did?

- 1 A Yes, sir.
- 2 Q So, who all left your house with you? Who left your
3 house that morning besides yourself? Who came with you to
4 Georgetown?
- 5 A My grandson.
- 6 Q And what kind of vehicle were you driving?
- 7 A The truck.
- 8 Q Who was driving the truck?
- 9 A Me.
- 10 Q And that's that what kind of truck is it?
- 11 A A Dodge Ram.
- 12 Q What color is that truck?
- 13 A Burgundy. That truck belonged ---
- 14 THE COURT: He'll ask you questions.
- 15 Q Okay, so, you all -- did you all take time to eat
16 breakfast or anything like that before you left?
- 17 A No, sir. I asked my husband, it's his truck, and I asked
18 my husband if I could use the truck, go up there and get
19 Belinda, bring her back to get her stuff and he said, "Yeah,
20 but this'll be the last time."
- 21 MR. MODICA: Your Honor, objection.
- 22 THE COURT: Yeah, you can't -- don't go into what
23 your husband said.
- 24 A Oh, okay.
- 25 Q Had the prosecution witness already made arrangements to

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1 come to your house that following Tuesday, which would have
2 been January the 31st, to pick up her stuff? Had she already
3 talked with you about coming that Tuesday to pick up her
4 stuff?

5 A No, sir.

6 Q Did she and her mamma not talk with you earlier about
7 coming over there that Tuesday to get the stuff?

8 MR. MODICA: Objection, leading.

9 THE COURT: All right, I sustain the objection.

10 That's a leading question. Rephrase your ---

11 Q Had you talked with the prosecution witness's mother
12 about getting the stuff on Tuesday?

13 A No, sir.

14 Q All right, so, when you and your son left -- again you
15 all left your house about what time?

16 A About 6:30, 6, 6:30.

17 Q And where did you all go when you left your house?

18 A Well, we had to get gas; and so, we stopped in Moncks
19 Corner at the Sunco Station right across from Piggy Wiggly and
20 the school and then we went on coming down here and got
21 Belinda.

22 Q And when you got to the trailer park that morning did you
23 know where to go -- did you remember where to turn and all
24 that stuff?

25 A No, my grandson had to tell me where to turn.

1 Q All right, now, when you pulled in did you recognize the
2 prosecution witness's trailer or did Nicholas have to tell you
3 where the trailer was?

4 A No, I recognized the trailer and her mom's car was out in
5 front. So, I just pulled around back.

6 Q What kind of car did her mamma have?

7 A It's a -- I don't even know. It's a wagon kind of thing.

8 Q What color was it?

9 A White.

10 Q That was parked where?

11 A Right there at the front porch.

12 Q And so, where did you park?

13 A I went around -- well, here's the trailer, here's the
14 porch, all right, her mom's car was parked here. So, I ---

15 Q Sit close to that microphone.

16 A I just pulled around the back, to the back step.

17 Q Okay, I'll show you what's Defense Exhibit 4A. Do you
18 recognize that middle trailer there as being the prosecution
19 witness's trailer, the little trailer in the middle?

20 A Yes, sir.

21 Q Huh?

22 A Yes, sir.

23 Q And so, you would have parked where?

24 A Well, her mom's car was parked right there in front. So,
25 I just pulled around there in back, to the back porch.

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- 1 Q Step down here and show the jury what you did. You need
2 to show them two or three times.
- 3 THE COURT: She's going to have to stand down there
4 and face this way so that the court reporter can hear her.
- 5 Q Face that way and talk loud, if you'd please, so the
6 court reporter can hear you. Which of these trailers then
7 would have been ---
- 8 A That one right there.
- 9 Q And you would have been coming in from the highway?
- 10 A Yes.
- 11 Q And so, you would have parked -- where was the car, the
12 white car?
- 13 A The white car was right there in front. So, I just
14 pulled ---
- 15 Q Speak up loud as you can speak.
- 16 A I just pulled around the back and faced the back porch.
- 17 Q All right, well, why didn't you just stop in the front
18 where -- because there was other room there for other vehicles
19 to park; wasn't there?
- 20 A Yes, sir, but I always park in anybody's back door. I
21 even do that at my house.
- 22 Q All right, go back and have a seat if you want to. You
23 say you even park at your own back door?
- 24 A Yes, sir.
- 25 MR. MODICA: Objection.

1 THE COURT: Well, I sustain the objection. That's
2 number one, not relevant, and number two, a leading question.
3 So, let's just move on to something else.

4 Q How about step down here. I'll move along here, Mrs.
5 Ward, with you. Step down here. I want you to point out on
6 this photograph here, which is Defense Exhibit 16B, what is
7 that a picture of?

8 A That's my back door and that's where I park all the time.

9 Q What vehicle is parked at your back door at your house?

10 A My truck, well, my husband's truck.

11 Q Thank you. All right, so, you -- did Mr. Parker tell you
12 to go to the back door and park?

13 A No, sir.

14 Q And why did you go again to the back door and park
15 instead of to the front door and park?

16 MR. MODICA: Objection.

17 THE COURT: Well, she's already answered that.
18 That's asked and answered. Let's move on.

19 Q I think they're going to push that point, Judge, that we
20 parked at the back because we was trying to ---

21 THE COURT: Don't -- I've ruled.

22 Q All right, so, you pulled where when you got to the
23 trailer?

24 MR. MODICA: Object.

25 A To the back porch.

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1 Q And what happened when you got to the back porch?

2 A Nicholas went to the back door to get Belinda and the
3 back door was locked. So, I hollered and told me him to go
4 around to the front. So, he went around the front, back of
5 the trailer to the front and a few minutes later him and
6 Belinda came out the back door.

7 Q All right, when you were, when you were parked at the
8 back side of the trailer was the front of your truck pointing
9 towards the back door steps or had you backed up to the back
10 door steps?

11 A No, it was pulled up to the porch.

12 Q So, the front of your truck would have been pointing
13 back toward the highway?

14 A Yes, sir.

15 Q All right, and you say when you saw Nicholas and the
16 prosecution witness coming out of the trailer which door were
17 they coming out of?

18 A The back door.

19 Q And describe when they came to the door how was the
20 prosecution witness dressed when you first saw her?

21 A I don't know. She was all wrapped up in a bed comforter
22 and holding a pillow.

23 Q And holding a what?

24 A Pillow.

25 Q And how much -- let's strike that. How much of her body

1 could you see that was not covered by the bed comforter?
2 A Just the top of her head.
3 Q Could you see her face?
4 A No, sir.
5 Q Were you still in the truck?
6 A Yes, sir.
7 Q Does this, which is one of the prosecution's exhibits,
8 does this look like the comforter that was on her that day?
9 A I don't remember it's been so long, but I know she was
10 covered up in a comforter.
11 Q When they came out of the back door where did they go
12 from there?
13 A They came around to the rider's side and they got ---
14 Q To the what side?
15 A To the driver's side and they got in the truck on the
16 back floorboard on account of the seat in the back of the
17 truck it is so little and you can't lay down on it. You've
18 got to lay down in the floor; and so, I throwed the seat up
19 and they laid down.
20 Q All right, now, how did your driver's side door of the
21 truck that you were sitting in how did that door get open?
22 Did you open it or did one of the others open it?
23 A I opened it.
24 Q Did you stay in the truck while they got in or did you
25 get out?

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1 A No, I got out and I just went and closed the back door
2 because they had left it open.

3 Q Did you help Mr. -- your grandson Nicholas and the
4 prosecution witness get in the truck or did they get in the
5 truck while you were walking to the back door?

6 A While I was walking to the back door they got in the
7 truck I guess because when I come back they was both laying
8 down covered up and I just got in.

9 Q When the -- when your grandson and the prosecution
10 witness were outside on the grass after they came down the
11 back door steps, do you remember how the prosecution witness
12 was moving? Was she on her feet? Was she up in his arms, was
13 she riding on his -- how was she moving?

14 MR. MODICA: Objection.

15 THE COURT: Just ask her how, just ---

16 A She was on her feet, I guess you would call it. Well, to
17 tell you the truth I think she was all messed up, drunk.

18 MR. MODICA: Objection, is non-responsive.

19 A Well, anyway ---

20 THE COURT: He didn't, he didn't ask you about what
21 you thought. He asked how she was positioned.

22 A Oh, okay, oh, well, my son, grandson had her in his arms
23 around and carried and put her in the truck.

24 Q All right, well, I will be the prosecution witness.
25 Stand down and show me how your grandson was holding her or

1 carrying her, what. Now, where is your truck here now? This
2 is the back door we're saying. They just came out of the back
3 door steps. So, your truck would be right in here; right?

4 A Oh, yeah.

5 THE COURT: Well, quit, quit -- don't, don't be
6 leading, please. He's not objecting every time.

7 Q Where was, where is the back door step? Where is the
8 back door step of the trailer, point out some place here in
9 the courtroom ---

10 A All right.

11 Q --- and say that that's the back door step of the
12 trailer.

13 A Okay, where do you want me to go?

14 THE COURT: All right, she can't hear you.

15 Q You just pick out a spot. Just pick out a spot that
16 you're going to pretend is the back door step of the trailer.

17 A Okay, I guess that was the back door.

18 Q All right, where would your truck be in relation to the
19 back door step of the trailer?

20 A The truck would be this way the front of it.

21 Q Where is the highway?

22 A Up there.

23 Q Okay, now, when the girl and the guy came to the back
24 door step you say the back door step is here and your truck is
25 here. So, I will be the girl.

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1 A Okay.

2 Q All right, now, you be the boy, Nicholas and you hold me

3 the way he was holding her.

4 A All right, she was holding a pillow.

5 THE COURT: This lady is not going to be able to hear

6 you. You all spin around or something.

7 Q Speak up loudly.

8 A All right, she was holding a pillow ---

9 THE COURT: I'm not sure the jury can hear you either,

10 and I'm not being critical because I know you have problems,

11 but ---

12 A She was holding the pillow in her arms and my grandson.

13 Q Was her feet on the ground or not on the ground?

14 A I think they was on the ground.

15 Q And the comforter would have been around her body?

16 THE COURT: Mr. Goude, I, I ---

17 Q Where was the comforter?

18 THE COURT: Well, no, not the question, but she can't

19 -- the court reporter is two feet away and can't hear her.

20 So, you all have got to position yourself.

21 A The comforter was wrapped around her and she had the

22 pillow.

23 THE COURT: Still can't hear her and I'm ---

24 COURT REPORTER: I can't hear when she turns her back to

25 me. I'm sorry.

1 THE COURT: Mr. Goude, you've got to help us with
2 that because ---

3 Q Okay, I think we've asked you what I wanted to ask. Have
4 a seat back. Just try to stick that tube in your mouth when
5 you're talking so that they can hear you, too.

6 A In my mouth, oh.

7 Q In your mouth.

8 THE COURT: Well, don't, don't, let's don't do that,
9 but I think she's okay when you're up here. You're doing very
10 well.

11 A Okay.

12 THE COURT: And we understand you've got a -- but when
13 you have your back turned to this lady or the jury or me we
14 can't hear you. So, if you ---

15 A Oh, okay.

16 THE COURT: --- as long as you're right there and
17 you've been doing fine until you got down there.

18 A All right.

19 Q Okay, so, how did they -- how were they positioned in
20 your truck when you come from the back door back to the truck?

21 A They were laying down on the back seat, both heads up
22 there, covered up, I guess, with the comforter.

23 Q Were they on the back seat or in the floorboard of the
24 truck?

25 A No, on the floorboard laying down.

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- 1 Q And which side of the truck were their heads at, behind
2 the driver's seat or the passenger seat?
- 3 A Passenger seat.
- 4 Q What was either of them saying to you when they were
5 coming from the back door until they got in the truck?
- 6 A Not a thing except just, "Lift the seat up. We're going
7 to lay down on the back seat," and I said, "All right."
- 8 Q What did you say to either one of them from the time they
9 came out the back door until the time you got back in the
10 truck?
- 11 A Not nothing.
- 12 Q What types of screams or cries was the Plaintiff ---
- 13 MR. MODICA: Objection.
- 14 THE COURT: Yeah, that's -- again, that's a leading
15 question. You've asked him -- you've asked what they were
16 saying and what you heard and that's a fine question, but not
17 to suggest an answer.
- 18 Q What did you hear coming out of the prosecution witness's
19 mouth while she was standing outside the truck?
- 20 A Not nary a thing.
- 21 Q When you got back in the truck what did you do?
- 22 A I turned the radio on and took off, backed up and took
23 off.
- 24 Q Did you say anything to the prosecution witness like good
25 Morning or ---

1 A No, sir.

2 Q Did the prosecution witness say anything to you?

3 A No, sir.

4 Q Did you say anything to your grandson or did he say
5 anything to you?

6 A No, sir.

7 Q And so, you did what with the truck?

8 A I backed it up where I was at, this way and I pulled out
9 and went on off.

10 Q Did you know how to get back to Summerville back to your
11 house?

12 A Oh, yeah, all I had to do was turn left at that store and
13 carry me right on out.

14 Q What road would was that, would be on when you turned
15 left at the store?

16 A I don't have no idea.

17 Q All right, well, now, were either of the two people in
18 the back of your truck saying anything to you as you left that
19 trailer park and headed back towards Summerville?

20 A No, sir, they was mumbling to each other and I just
21 ignored it and had the radio on.

22 Q Did you think it unusual that they were laying down in
23 the back of the truck?

24 MR. MODICA: Objection.

25 THE COURT: I sustain the objection, ask her about

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1 facts.

2 Q And from there -- where did you go from there?

3 A To the house -- well, no, I got -- stopped in Moncks
4 Corner, that's when Belinda rose up and said, ``Well, my kids,
5 I left them at somebody's house,`` below her trailer, and she
6 said, ``Got to go pick up my kids.`` I said about 8:30, she
7 had to pick her kids up. I said, "Belinda, there ain't no way
8 that I can get back to Georgetown at 7:30, I mean, 8:30 to
9 pick the kids up." I said, ``Let me call your mamma from the
10 house and I'll tell her to go pick them up.`` She said, ``All
11 right.`` That's when I seen them.

12 Q That's when you seen what?

13 A Her and Nick they both sat up and she had tape.

14 Q You have to speak close to the microphone and you can
15 still show us with your hands there.

16 A She had tape, tape on her hands, I mean, her arms from
17 her wrist, her elbow and it was in globs like that and I said,
18 ``What she got that tape on there for,`` and Nick, "Well,
19 that's the only way that I can get her to talk with me,`` and
20 I said, ``Well, you take that tape off of her. I'm going to
21 take both of you to the county jail right now,`` because I was
22 just a block from it, and they both started squalling.
23 Well, and then saying, ``No, please don't take me to jail,
24 don't take us around there. We'll take it off,`` and I said,
25 "Well, do it right now before this light change or I'm going

1 to go turn right," and so they took the tape off and sat up
2 in the truck and we went on home.

3 Q Who asked you "not to take us to the jailhouse"?

4 A Both of them, Nick and Belinda.

5 Q So, what did you do then?

6 A Well, they took the tape off, sat up in the floorboard
7 and we went on to the house.

8 Q And what happened? Did you talk with them anymore from
9 there until you got to your house?

10 A No, because I was aggravated and mad with them.

11 Q How far is it from Moncks Corner where you saw the tape
12 the first time till you got -- how far is your house from
13 there?

14 A About eight or ten miles.

15 Q And when you got to your house what did you do when you
16 got to your house?

17 A I pulled up side the little house so they could load the
18 truck up and I went in the big house and they went in the
19 little house.

20 Q Did you say anything to them when you stopped the truck
21 and got out?

22 A No, well, I said, "I'm going on in the house to tell
23 James we're back. You all get to loading up the truck," and
24 it started drizzling rain then, too.

25 Q Did you leave the keys in the truck when they was loading

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1 it?

2 A No, sir, I don't.

3 Q And so, when you went in the house could you see them,
4 the prosecution witness and Nicholas while they were outside
5 loading the truck?

6 A Yes, sir. When -- I went back out there because it
7 started drizzling rain and I was taking some garbage bags,
8 black ones for her to put some of the stuff in the boxes and
9 stuff so they wouldn't get wet in the back of the truck and I
10 said, "Here's some bags. Put some of that stuff in," and
11 they had done had the back seat loaded up some boxes and all.

12 Q Who was loading the stuff in the truck?

13 A Nick and Belinda.

14 Q When you went back out there and took the garbage bags
15 for them did you see any tape on the prosecution witness's
16 hands at that time?

17 A No, sir.

18 Q When the prosecution witness sat up in the back of the
19 truck in Moncks Corner did you see any tape over her mouth at
20 that time?

21 A No, sir.

22 Q When you went back out to the garage apartment and took
23 them the garbage bags did you see any tape on the prosecution
24 witness's legs or feet or ankles at that time?

25 A No, sir.

1 Q All right, so, you took them the garbage bags and what
2 happened after that?

3 A Well, I guess they finished loading up the stuff because
4 about 11:00 or so Nick -- well, I had called in there and told
5 her mamma to go pick the kids up where they was at, and ---

6 Q Well, let me ask you about that. Now, you said that at
7 some point driving from Georgetown to Summerville the
8 prosecution witness said she needed to pick up her kids at
9 8:30 from the baby-sitter?

10 A From somebody that she left them with, they had to leave
11 to go somewhere at 8:30.

12 Q And so, did you tell her you would call her mamma or did
13 she ask you to call her mamma?

14 A No, I told her, I said, "I can call your mamma," and
15 she said, "Well, that will be all right. Go call mamma and
16 tell her to pick up the kids."

17 Q All right, so, when you got to Summerville and got out of
18 the truck at some point thereafter did you call her mother?

19 A Yes, sir. I went -- well, when I went in the big house
20 before I took the bags out there I called her mom and told her
21 where the kids was at, they was in a trailer, two or three
22 trailers from where Belinda lived and she said, "I know who
23 they are." Belinda told me the names. I forgot them, but
24 anyway, her mom went and picked the kids up.

25 Q Did you know the prosecution witness's mother that

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1 morning, did you know her?

2 A You mean Belinda's mom?

3 Q Yes, ma'am.

4 A Yeah, yes, sir.

5 Q Did you have Belinda's mom's phone number?

6 A Yes, sir, well I got it from them.

7 Q What was Belinda's mamma's name?

8 A Debbie.

9 Q And did you tell the mother where -- that Belinda was
10 there at your house?

11 A Yes, sir.

12 Q What did you tell the mom?

13 A She was more worried about her car than anything else and
14 I told her her car was ---

15 MR. MODICA: Objection, it's non-responsive.

16 THE COURT: Yeah, I sustain the objection. You can
17 tell us what you told the other lady but you can't tell us
18 what she told you.

19 A Oh, okay, oh, oh, okay, well, I told her about -- she
20 asked me if Belinda was ---

21 MR. MODICA: Objection.

22 THE COURT: No, you can't -- just tell us -- if you
23 told her anything. He's asking you what you told her, not
24 what she asked you.

25 A Oh, okay. I said, "Well, Belinda left the kids at so

1 and so." Belinda told me the names of them. I done forgot,
2 but anyway, "She said the kids are down there and she's got
3 to pick them up at 8:30," and she went and picked the kids
4 up, and I guess.

5 Q All right, just keep it calm. Did you tell her mamma
6 that Belinda was there at your house?

7 A Yes, sir.

8 Q And do you know approximately what time you made that
9 first call to her mother?

10 A Well, it was about 9, 9:30, I guess. I don't remember.

11 Q Okay, and then after that you said something about taking
12 the garbage bags.

13 A Yes, sir.

14 Q And after that what happened?

15 A I come back in there, let's see, I called Belinda's mom
16 back because Belinda asked me to call her mom back and ask her
17 if she picked the kids up and I called her mom back and she
18 said, yeah, she had the kids.

19 Q Now, when you called the mom back the second time do you
20 know approximately what time that was?

21 A No, I don't. No, I don't remember.

22 Q Where was the prosecution witness and your grandson when
23 you called her mother back the second time?

24 A They had already come in the house and went and laid
25 down.

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1 Q When they came in, they -- you're talking about your
2 house, the main house?

3 A The big house there, right.

4 Q When they came in the big house did they say anything to
5 you?

6 A My grandson asked me if they could go back there and lay
7 down because they was kind of feeling bad, and I said yeah,
8 and then I went in there and told my husband and he said one
9 o'clock that was when they had to leave here.

10 Q And when you -- you want some water or something?

11 A Yeah.

12 Q When they came into your house to go lay down did you see
13 the prosecution witness with your eyes when she came into your
14 house?

15 A No, I wasn't paying no attention. I just told them,
16 yeah, go on back there in the bedroom. I was in the kitchen.

17 Q And do you know which bedroom they went to?

18 A The one they always slept in, the one right by the
19 bathroom, the left-hand side.

20 Q Did you go in the bedroom anytime, in their bedroom while
21 they were in the bedroom?

22 A I went in there once. That's it. When I called her mom,
23 and told her -- I asked her and found out about the kids and I
24 went and told her that, yeah, she did have the kids and I told
25 her mom, she was wanting her to call her or something another,

1 no, talk to Belinda, and I said, "I think they're asleep,"
2 and I went in there and they was in the bed covered up.

3 Q And describe their positions on the bed when you went in
4 the bedroom.

5 A Well, Nicholas was laying right here and Belinda ---

6 Q You need to be close to that microphone, please.

7 THE COURT: All right.

8 A Belinda, I mean, my grandson was laying down on his back
9 and Belinda had her head on his arm.

10 Q Was that under the covers or on top of the covers?

11 A Under the covers.

12 Q Were the covers pulled up over their bodies or not over
13 their bodies?

14 A Up to their neck.

15 Q Could you tell if they had clothes on or not clothes on
16 under the covers?

17 A No, sir. I didn't see all that.

18 Q Were they asleep or awake at that time?

19 A Asleep and that's when I put the sheet back down and come
20 on back out.

21 Q The sheet was the one hanging on the door?

22 A The door, yes, sir.

23 Q Do you all have doors over your bedroom?

24 A Not for the bedrooms, but we do for the bathroom.

25 Q But over the bedrooms what kind of door would you use?

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1 A A sheet. It would hang up, double sheets.

2 Q So, when you went in there to check after -- while you
3 were on the phone, was the phone still open or on went you in
4 the bedroom to see if the girl was awake or not?

5 A Yes, sir.

6 Q Was the girl awake when you went in the bedroom or not
7 awake?

8 A No, sir, they was asleep.

9 MR. MODICA: Objection, Your Honor, to the leading.

10 THE COURT: Well, go ahead. Just try not to ask
11 leading questions.

12 Q So, what did you do after you checked on the bedroom and
13 saw that they were asleep?

14 A I went back to the phone and told Debbie, I said I'd get
15 her to call her when she gets up. I said, "James said that
16 be out of here at one." So, she said all right.

17 Q I will show you State's Exhibit One, which are some
18 phone records and it has got a phone at 9:30 a.m., January the
19 29th to [REDACTED]. Does that look like the call you made to
20 the prosecution witness's mom at 9:30?

21 A Yes, sir.

22 Q Then there's another call to that same number, [REDACTED]
23 made at 10:42 a.m. Does that look like the second call you
24 made to her mother?

25 A Yes, sir, that's when I called and finally she answered

- 1 it.
- 2 Q And that the first call made at 9:30 shows that call
3 lasted two minutes and 50 seconds.
- 4 A Right.
- 5 Q And the second call looks like it was five minutes and 58
6 seconds.
- 7 A Right.
- 8 Q And you said starting all this morning Nicholas woke up
9 after talking with the girl and is there a call into your
10 house at 5:17 a.m.?
- 11 A Yes, sir.
- 12 Q That lasted for two minutes and 54 seconds?
- 13 A Yes, sir.
- 14 Q That's from 527-2895 in Georgetown?
- 15 A Yes.
- 16 Q And then is there two calls back made at 6:14 a.m., well
17 6:13 a.m. and 6:14 a.m. both to 543-5655?
- 18 A Yes, sir.
- 19 Q And is that approximately the time you all left the house
20 6:15?
- 21 A Yes, sir; yes, sir.
- 22 Q Do you remember about how long a drive that is down here
23 to Georgetown?
- 24 A It's about an hour and a half, two hours.
- 25 Q All right, so, they were asleep in the bed and at some

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1 point did you leave your house that day, leave your
2 Summerville house to come to Georgetown?

3 A Oh, yes, sir, about one o'clock.

4 Q And who left your house to come back down here?

5 A Well, the truck was loaded and it was starting to rain
6 again; and so, I went in there and got them up, I said, "Your
7 papa is raising the dickens." I said, "We gotta go." So,
8 they got up and got in the truck and we left.

9 Q And where did you all sit in the truck? Who sat where?

10 A I was driving. Belinda was sitting beside me and Nick
11 was right beside Belinda on the passenger side.

12 Q And was there stuff in the back seat of the truck?

13 A Yes, it was piled all up. Belinda had asked me to even
14 go in there and get a dress, some kind of gown that was
15 hanging up in my closet she had left. So, I went in there and
16 got that and put it in the truck.

17 Q All right, when you all left there, Mrs. Ward, left your
18 house at one o'clock where did you all stop in route coming to
19 Georgetown?

20 A That same station right across from the school, Piggly
21 Wiggly in Moncks Corner and got gas.

22 Q And when you got gas who put the gas in the truck, who
23 pumped it?

24 A My grandson while I went in and paid for it.

25 Q Did you leave the keys in the truck when you were in

1 there?

2 A Yes, sir.

3 Q And when you left there where did you go from there?

4 A We went to Arby's and they wanted something to eat. I
5 didn't want nothing but they wanted something to eat. So,
6 they ordered and then we left. They ate on the way.

7 Q Did you all go in or did you go through the drive
8 through?

9 A No, sir, we went through the drive way.

10 Q Any particular reason you went to the drive-through
11 instead of going in and eating?

12 A I always go through the drive.

13 MR. MODICA: Objection.

14 A I don't hardly ever go in.

15 Q Well, did they eat -- did your grandson get something to
16 eat and drink?

17 A Yes, sir.

18 Q Did the prosecution witness get something to eat and
19 drink?

20 A Yes, sir, they ordered two combos something. I don't
21 know.

22 Q All right, and from there where did you go?

23 A We went to her trailer.

24 Q And when you got to her trailer was the white car still
25 parked in front of the trailer?

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1 A Yes, sir.

2 Q And where did you park this time?

3 A Well, like this is the trailer I went to the -- let's
4 see, back, to the back and then I backed up to the step that
5 time on account of the truck was loaded.

6 Q Did you pull around the far end of the trailer the second
7 time, too, the far end away from the highway as you had the
8 first time that morning?

9 A I guess you'd call it that, yeah, I went by -- around and
10 went straight back ---

11 Q You backed the tailgate of your truck up to the porch?

12 A Yes, sir, so we could unload it.

13 Q And what did you all do -- excuse me, what -- the back
14 porch, what did you all do then?

15 A Well, we went to open the door to unload the truck and
16 the door was locked.

17 Q Which door?

18 A The back door and I told them, I said, "The back door is
19 locked," and I said, "What do we do now." She said, "Just
20 put it on the porch and on the ground," and so, we unloaded
21 the truck and I said, "Well, what are you going to do? What
22 are you going to do? You want me to take you to your mom's?"
23 She said, "No, carry me to the phone if you would right down
24 the street," and so ---

25 Q You asked her if she wanted you to carry -- if you wanted

1 -- she wanted you to carry her where?

2 A To her mom's.

3 MR. MODICA: Objection, Your Honor.

4 THE COURT: I overrule the objection.

5 MR. MODICA: He just heard it.

6 THE COURT: I've overruled the objection.

7 Q And what did the prosecution witness say?

8 A She said, "No, just take me to the phone and I will call
9 my mom," and I said, "All right." So, I took her down there
10 to that little store.

11 Q Is that the store right there the highway where you turn
12 off to go into the trailer park?

13 A Yes, sir, I started to stop at the store, and she said,
14 "No, go to that pay phone there. They got a pay phone in the
15 next building."

16 Q Was the store open or closed?

17 A It was open.

18 Q Were there people there?

19 A Yes, sir, there was.

20 Q And when you got to the pay phone at the little store
21 what did, what did you all do there?

22 A Well, Nick and Belinda got out. They went to the pay
23 phone and when they come back Nick said, "Well, why didn't you
24 tell mom that I was" ---

25 MR. MODICA: Objection.

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1 THE COURT: Go ahead.

2 A And ---

3 MR. MODICA: Your Honor, she's testifying what the

4 Defendant said.

5 THE COURT: I'm going to let her do it. Go ahead.

6 A And Belinda said that, "I don't want you and mom to get

7 into it," on account that's why I had all her stuff to start

8 with because her mom had beat the you know -- they had got

9 into it or something another. Anyway that's why I went up

10 there and got them, but anyway, that -- I said, "Well, I

11 don't -- you don't want Nick to face your mom. I don't want

12 to face her either." I said, "I'm going to take you back to

13 the trailer and I'm leaving." So, I took her back to the

14 trailer. Nick got out, let her out, gave her some money for

15 cigarettes and give her a kiss. She kissed him bye

16 and we left.

17 Q You say anything to her as you left?

18 A I told her bye.

19 Q Did she say anything to you?

20 A She told me bye.

21 Q And where -- had you all already unloaded the stuff out

22 of your truck?

23 A Yes, sir.

24 Q Put it all where?

25 A On the back porch and the side of the steps.

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1 Q When Nicholas went, when you all first went to the
2 trailer that morning and Nicholas went around to the front
3 door, could you hear from the truck? Could you tell whether
4 or not he would have knocked on the front door? Would you
5 have been able to hear that one way or the other?

6 A I don't know. I really don't.

7 Q Was it daylight when you all were there at the trailer?

8 A Yes, sir.

9 Q When they used the pay phone at the store, when they got
10 through using the pay phone did you ask the prosecution
11 witness anything?

12 MR. MODICA: Objection, leading. Asked and
13 answered.

14 THE COURT: Yeah, I sustain the objection. She's
15 indicating no anyway.

16 A No, sir.

17 Q Or did you say anything to the prosecution witness ---

18 MR. MODICA: Objection.

19 Q --- at that time?

20 THE COURT: Well, I'll allow that. Go ahead.

21 A Well, I just said, "Was your mamma home?" And she
22 said, "Yeah." She said, "She's on her way," and I said,
23 "Well, I'm", and that's when Nick said, "Well, she didn't --
24 how come you didn't tell your mamma I was there," and I said,
25 "You didn't tell him and Nick was there," and she said,

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1 "No." She said, "Because I don't want Nick and her to
2 fuss," and I said, "Well, I ain't getting, facing your mamma
3 either." I said, "I'm leaving." So, I left.

4 Q Since then, since that day, January the 29th of 2006,
5 has the prosecution witness come back to your house in
6 Summerville since that day?

7 A Yes, sir.

8 Q Approximately how many times?

9 A Four I think.

10 Q Did the prosecution witness bring you anything on one of
11 those trips?

12 A Yes, sir.

13 MR. MODICA: Objection.

14 THE COURT: I, I sustain the objection. That's a
15 leading question.

16 A Okay.

17 Q When -- on any of those trips when the prosecution
18 witness came to your house what did the prosecution witness do
19 or give you?

20 MR. MODICA: Objection.

21 THE COURT: That's a leading question. I sustain
22 the objection.

23 Q On any of the occasions when the prosecution witness came
24 to your house was there anything in the prosecution witness's
25 vehicle?

1 MR. MODICA: Your Honor, I don't know how many times
2 I have to object to the same question.

3 THE COURT: I sustain the objection.

4 Q On any occasions when the prosecution witness came to
5 your house did you have anything in your house after she left
6 that was not there when she came?

7 MR. MODICA: Your Honor.

8 A Yes, sir.

9 THE COURT: I sustain the objection.

10 MR. MODICA: Can you ask counsel to move on, please?

11 THE COURT: Yeah, let's move on to another
12 question. I'll let you make a proffer.

13 Q Did you receive any gifts in 2006 ---

14 THE COURT: I'll -- excuse me.

15 Q --- from the girl after this date?

16 MR. MODICA: Objection.

17 MR. GOUDE: You have to give a little bit of a
18 leading or they won't even know what you're talking about.
19 You can't just say ---

20 THE COURT: Whoa, whoa, whoa, whoa, just -- I've
21 ruled. I'll let you make a proffer after you get through with
22 the direct.

23 MR. GOUDE: Judge, all right.

24 BY MR. GOUDE:

25 Q Do you know why the prosecution witness came to your house

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1 any of those times?

2 MR. MODICA: Objection, asking for an operation of
3 mind.

4 THE COURT: I sustain the objection. That would be
5 having to go into the mind of a person that can't.

6 Q Did the prosecution witness say why she came to your
7 house on those times?

8 MR. MODICA: Objection.

9 THE COURT: I'll allow that.

10 A Well she came to see my daughter and me and my husband, I
11 guess, but she went and brought me a CD.

12 MR. MODICA: Objection.

13 THE COURT: I'm going to let her go ahead and
14 testify.

15 Q What kind of a CD?

16 A Elvis Presley because she knows I like Elvis.

17 Q When you saw the prosecution witness when she sat up in
18 the back seat in Moncks Corner what was her demeanor? How did
19 she appear to you?

20 MR. MODICA: Objection, Your Honor.

21 THE COURT: I'll allow the question. Go ahead.

22 A Well, I hate to say it but I think they was all on drugs,
23 both of them.

24 MR. MODICA: Objection, that's just speculation.

25 THE COURT: I'll allow her to answer. Go ahead.

1 Q When you got to your house and the prosecution witness
2 asked you to call her mother what did you tell the prosecution
3 witness about who should make the call?

4 MR. MODICA: Your Honor, objection. We've been over
5 this area before.

6 THE COURT: Let's finish up. I think you have
7 covered that, but I'll allow her to answer it.

8 Go ahead.

9 A She just told me to call her mom and tell her where the
10 kids was, somebody's house, I forgot and to pick them up
11 because she had ---

12 THE COURT: Whoa, whoa, whoa. You've answered the
13 question.

14 MR. MODICA: Your Honor, is there any other questions?

15 THE COURT: He, I think he's -- he'll tell us when
16 he's ready to stop.

17 Q In the little house have you all had dogs that had been
18 in that house before?

19 A Yes, sir.

20 Q And what kind of dogs and what color of dogs were they?

21 A Well, we've got a white chow and we had a brown pit bull
22 boxer and a black sooner.

23 Q In the trailer that the prosecution witness was living in
24 in the living room what kind of floor covering was on that
25 floor ---

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1 MR. MODICA: Objection.

2 Q --- in the trailer that the prosecution witness was
3 living in?

4 MR. MODICA: We've been talking about a number of
5 trailers, so.

6 THE COURT: Yeah, we ---

7 Q In BB Smith's trailer park, the trailer you went to that
8 Sunday morning what ---

9 A I don't remember. I really don't. I don't even think I
10 ever went in the living room.

11 Q All right, when the prosecution witness and your grandson
12 lived in the trailer park in Summer Creek did they have a
13 telephone in their trailer?

14 A I don't know if they used somebody they knew cell phone
15 or what, but I knew they didn't have no telephone.

16 Q When the prosecution witness and your grandson were
17 living with you in your house did you ever stop the
18 prosecution witness from calling her mother if she wanted to
19 use your phone?

20 A No, sir.

21 Q Could she also call collect to her mother from your phone
22 if she wanted to?

23 A If she wanted to, yeah.

24 Q Are you also charged with kidnapping and burglary in the
25 first degree?

1 A Yes, sir.

2 Q That's all the questions I have, Judge. Thank you.

3 THE COURT: We'll take a break before we do cross
4 examination. I'm going to let you go to the jury room. We'll
5 take about a ten-minute break to refresh.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right, Mrs. Ward, you can step down
9 if you want. Just you can't talk about your testimony with
10 anybody, nobody, but you can step down, nobody at all, if you
11 want to have some water or use the rest room, but you can't
12 talk to anybody about your testimony.

13 ***** OFF THE RECORD *****

14 (On the record.)

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right, before we get the jury in I
18 understand Mr. Colvin mentioned to me that he had some matter
19 that he wanted to put on the record.

20 MR. COLVIN: That's correct, Your Honor. Your Honor,
21 I'm Richard Colvin and I'm the court-appointed attorney for
22 the lady who was just testifying on the witness stand, Shirley
23 Ward. Shirley Ward is charged with the same offenses that the
24 Defendant today is charged with and those charges are still
25 pending.

1 On yesterday I was required to be here because my client
2 may have been called to testify. I was here. I was aware
3 that there was a sequestration order in effect for the trial
4 of this case and because of that I studiously avoided giving
5 any appearance of communicating any testimony that had taken
6 place in here to my client. I either stayed out of the
7 courtroom or I stayed away from her.

8 MR. MODICA: Your Honor, if he's asking this diatribe
9 can we excuse her? I don't know if it'll be germane to ---

10 THE COURT: I don't think it will.

11 MR. COLVIN: Your Honor, while I was here waiting in
12 case my client is called to testify, as I believe is my duty,
13 and I had been here when you advised her of her right not to
14 testify, asked her if she had spoken with me about the matter,
15 anyway I was here during the course of the trial, had to go to
16 the men's room. When I came out of the men's room I observed
17 and I heard the Assistant Solicitor, Dori Biagianti, telling a
18 Sheriff's Officer, a policeman of some sort, I believe his
19 name is Hayward. I'm not sure of his rank or title, and she
20 was communicating to him testimony that had been given in the
21 court. I stood there in disbelief and listened and Ms.
22 Biagianti told me that that was a private conversation and
23 that I had no business there. I told her that she had no
24 business communicating the testimony of another witness to
25 this person to which she replied that, no, that it was okay,

1 that she, and she admitted that she was telling him testimony
2 that had been taking place in this courtroom prior to that,
3 but she said that he was not subject to the sequestration
4 order because he was not on the witness list and that he would
5 be called as a reply witness.

6 Your Honor, my feeling is that that order was in effect
7 for the purpose of insuring a fair trial. I believe that by
8 subverting that order she is subverting your attempt to have a
9 fair trial, okay.

10 I went back and talked to you about this yesterday, told
11 you what had happened and you told me that you thought it
12 should go on the record.

13 THE COURT: Well, actually I think what I told you is
14 that since it was Mr. Goude's case at the time to discuss that
15 issue with Mr. Goude and determine what if anything needed to
16 be done.

17 MR. COLVIN: Yes, sir, I was getting to that. You did
18 tell me that I should take it to Mr. Goude and tell him about
19 it, but that you were willing to put it on the record and I
20 thought you said that it should be on the record. I thought
21 you said that she should not have done that.

22 I went to Mr. Goude. I told him and he didn't make any
23 issue of it, didn't do anything about it. I don't know if he
24 intends to in the future or not, but anyway, I went home
25 last night and I stewed about it and I wasn't happy about it

1 because it's not the first time that it's happened and I
2 didn't sleep well. I got up this morning and I decided I
3 wasn't going to do anything about it at all either. It wasn't
4 my case, maybe they would call this officer as a reply
5 witness, maybe they wouldn't. I still felt like Ms. Biagianti
6 had done wrong, but I said, it's not my case. Mr. Goude
7 didn't see fit to do anything. It's over.

8 After my client testified here today I was escorting her
9 out of the courtroom asking her if she needed more water and
10 trying to advise her of what was going to happen next when Ms.
11 Biagianti accosted me and told me that I could not talk to
12 her. She became very excited about it. She was apparently
13 upset that I had said something to her yesterday and she
14 brought that up. She had said that I had said something to
15 her about talking to the witness, a potential
16 witness in the hallway and I have no reason to expect that
17 that man would have been here except that they were expecting
18 to call him as a reply witness.

19 Judge, since the times of the Civil Rights Movement,
20 before that when child labor laws had to be addressed, any
21 time there's been an issue that needed attention, lawyers have
22 been at the forefront. I feel as a lawyer when you see wrong
23 done you try to do something about it. We're all lawyers. I
24 don't want anything done except that Ms. Biagianti have it
25 explained to her that that's not the kind of thing that is

1 permissible under a sequestration order. I don't care about
2 whether the man was on the witness list. I don't care if he
3 would have been a reply witness. It certainly violates the
4 spirit of your order for her to communicate to him testimony
5 of another witness. That's what I have to say for the
6 record.

7 THE COURT: Thank you. Ms. Biagianti or Mr. Modica?

8 MR. MODICA: Well, actually I might be able to help,
9 Your Honor, because if she's guilty of it then I'm guilty of
10 it as well. As you will recall yesterday the Defendant, I'm
11 kind of shocked when they told us that he was forced to give,
12 you know, to talk to the police and that's the first time we
13 had heard about it. We had a Jackson v. Denno hearing. The
14 Defendant, of course, didn't have to testify at that hearing,
15 but certainly you would think if that was an issue that he
16 would have brought it up then, but he didn't; and so, you
17 know, when that happens, as you know you have our list,
18 Sergeant James Hayward, who is the person who is
19 present in the video with Paul Glover during the interview and
20 never said anything was the person that the Defendant had
21 surrendered to. So, we went to him and we asked him about
22 that. Well, obviously, in order to talk about that and ask
23 him about it and see if we were going to call him as a reply
24 witness and we didn't specifically tell him what the person
25 said. Certainly by our questions it would imply the

1 implication of why we were asking, and there's certainly,
2 there's no way to do that. There's absolutely no way in
3 the world to talk to a potential reply witness without to some
4 degree incorporating what you have learned in court. You
5 can't do it. So, that's what was done, and it was done in my
6 presence, and actually, as I recall, I did most of the talking
7 to Sergeant Hayward.

8 Be that as it may we don't believe -- there may be a one
9 percent chance of calling him anyway, I'm very much of ethics
10 and I appreciate Mr. Colvin being a guardian of ethics. I'm
11 very much aware of ethics. I believe that I've complied fully
12 with your order, and in any event, we're not calling that
13 person.

14 THE COURT: All right.

15 MR. COLVIN: Your Honor, just briefly, Mr. Modica might
16 be talking about a different incident ---

17 MR. MODICA: No, specifically talking about.

18 MR. COLVIN: --- because he was, he was clearly not
19 there when I was speaking with ---

20 MR. MODICA: I was not there initially. Immediately
21 thereafter I was. So, I'm aware ---

22 MR. COLVIN: No, no, Your Honor ---

23 THE COURT: Well, I'm not going to let you all argue
24 this out. We -- but I'm -- Ms. Biagianti, you want to say
25 anything since your name was mentioned? I'm certainly going

1 to give you the ---

2 MS. BIAGIANTI: No, sir, Mr. Modica covered it well,
3 and I think the only reason why this has come to this today is
4 because I saw Mr. Colvin speaking with his attorney [sic] and
5 he just told the Court that he was advising her on what was
6 going to happen next which is improper in itself. So, I don't
7 have anything to say.

8 THE COURT: All right, well, we have to -- as a
9 profession we have to police ourselves because the Judge can't
10 go around watching everything that everybody does. I will say
11 this, and I think I mentioned this to you, Mr. Colvin,
12 yesterday, that we -- it may be somewhat of a gray area when
13 you get into reply witnesses because they are usually not
14 subject to sequestration because you don't know they're going
15 to be a witness until the Defense puts up a defense. Now,
16 that being said, there's -- I'm not sure and I'm not
17 finding fault, but I'm not sure that once the -- a party's
18 counsel becomes aware that somebody is going to be a reply
19 witness that that -- they should be talking to the witness
20 about what was testified to because that's the whole purpose
21 of a sequestration order, but I understand the defense, I
22 mean, the prosecution's position that we don't know whether to
23 use them as a witness because we don't know what they're going
24 to say about that issue. That may be just be a chance that
25 the prosecution will have to take because the prosecution is

1 generally in a position to be prepared and know everything
2 about their case before it even starts and, obviously, the
3 issue of whether or not a statement has been coerced is a
4 crucial issue, and I would be -- and I don't tell prosecutors
5 how to prosecute their case but it would seem to be wise to
6 have covered with everybody who was involved in the
7 interrogation, whether they spoke or not, if they were present
8 what if anything they did and know that before we start the
9 trial. All that being said, I'm certainly glad everybody has
10 aired this. I don't know of any action that the Court can
11 take. At this time the only thing would possibly be something
12 that has to do with this trial because that's all I've got the
13 jurisdiction to do. What are you asking the Court to do if
14 anything or you just want ---

15 MR. COLVIN: Well, Judge, I just told you what I'd
16 like to know really is who's right and who's wrong. I mean, I
17 don't want to get upset about this if I'm wrong, but Ms.
18 Biagianti told me that she had told him what a witness had
19 said and she said that it was all right to do that.

20 MS. BIAGIANTI: No, I did not.

21 THE COURT: Well, let me tell you what ---

22 MR. COLVIN: She said it's okay. I'd like to, well,
23 you can even answer it hypothetically.

24 THE COURT: No -- well, I'll answer it hypothetically
25 because I don't have a good answer because let me tell you

1 this, I have had attorneys tell me that when a witness is
2 their client that I can't stop them from talking to the
3 witness because they have even a -- even if I tell the witness
4 not to talk to anybody that they have -- that the witness has
5 an absolute right at any time whether they're on the stand to
6 communicate with counsel.

7 MR. COLVIN: I thought so, too, but she stopped me.

8 THE COURT: Well, I have been told that. I haven't
9 seen any law on it and I'm not making a ruling, but you know,
10 I also said that she was not to talk about, you know, to
11 anybody about her testimony. Now, whether or not that
12 precludes you from talking to her as an attorney or whether
13 that precludes, generally that does not preclude procedural
14 matters, you know, would you like a cup of water, you can go
15 now, you know, now the State may ask you some questions, stuff
16 like that that's procedural I don't think is really violating
17 anything I've said. This obviously has some undercurrents
18 that haven't just arisen yesterday and today. This -- I'm not
19 from this jurisdiction. So, I don't know how the interaction,
20 what interaction exists between the public defender's
21 office or public defenders because there's several of you and
22 the prosecution, but ---

23 MR. COLVIN: I enjoy excellent relationship with the
24 Solicitor's Office. That's why I want to cure this problem
25 before it becomes a bigger problem that effects our

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1 relationship.

2 THE COURT: Well, the best way I know to cure it is
3 in the past if this type issue arises that before a potential
4 witness is talked to that it be run before the Judge, that the
5 prosecutor in this kind of situation could, and I'm not saying
6 should, because I don't know but it certainly would have been
7 -- we would have not been in this imbroglio had it been run by
8 the Judge in the presence of you, of course, you've got or at
9 least Mr. Goude because he's in this current trial and the
10 Judge could have made a ruling and then I'm not going to say
11 everybody would have been happy, but at least everybody would
12 have had some guidance. So, my suggestion in the past, in the
13 future is that if this situation arise again and I'm certainly
14 not the resident judge here and this is the only time I'm
15 scheduled at least as far as the schedule goes to be here,
16 that if this kind of situation arises it be run by the Judge
17 for the Judge's guidance before any communication along those
18 lines take place, and as far as the situation that -- of you
19 talking to her, I have to admit I don't have a good answer for
20 that because that's your client and like I say some attorneys
21 have told me when I made comments like I did not to talk to
22 anybody that they take issue with that. So, I suggest that in
23 the future that just be kind of handled with kid's gloves and
24 if this situation doesn't arise that often but it's not
25 unheard of either. So, I'm going to ---

1 MR. COLVIN: Well, I want to tell you as an officer of
2 the court all I did was ask her if she -- if I could get her
3 some more water.

4 THE COURT: Well, I heard you ask -- I was standing
5 right there when you asked her that.

6 MR. COLVIN: And then and I put my arm around her
7 shoulder and I was going to tell her because she's
8 unsophisticated about court. She is lost as you have seen
9 during this trial and I was going to explain to her that Mr.
10 Modica was going to have questions for her and that's when I
11 was stopped and told that I could not talk to my client by the
12 Assistant Solicitor and that's when I decided well, no
13 -- because she brought up what she had done yesterday and I
14 said, "Well, look, let's go talk to the Judge." She said,
15 "I'm not going to talk to the Judge. You can talk to the
16 Judge." She said, "He dismissed you yesterday."

17 THE COURT: Well ---

18 MR. COLVIN: And I said, "No, he didn't dismiss me
19 yesterday. He told me to tell Mr. Goude."

20 THE COURT: Yeah, and -- so, but in the future ---

21 MR. COLVIN: But I'm sure you told me she shouldn't
22 have been ---

23 THE COURT: --- in the future, in the future, I,
24 again, I suggest that before these kind of things arise that
25 they be run by the Judge because now, now we've got these

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1 issues on the table.

2 All right, thank you an awful lot.

3 MR. COLVIN: Thank you.

4 THE COURT: And I appreciate it, Mr. Colvin. Mr.

5 Goude, you have any -- you want to chime in in any way on this

6 since you've ---

7 MR. GOUDE: I have no chiming to make.

8 THE COURT: All right, for whom the bell tolls it's

9 not going to toll at all.

10 All right, let's bring in the jury.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right, Mr. Modica.

14 CROSS EXAMINATION

15 BY MR. MODICA:

16 Q Mrs. Ward, I'm wondering if you could help me. What I
17 would like to do is be able to ask you a question, complete
18 the question and then when I do so then you can answer so that
19 we're not talking at the same time. Would that be all right
20 with you?

21 A Yes.

22 Q Okay, the other ---

23 A That will be all right.

24 Q The other thing is most of my questions are going to ask
25 for a yes or no answer. I would ask that you answer yes or no

1 and if you need to feel free to explain your answer after you
2 answer yes or no. Would that be okay with you?

3 A That will be all right.

4 Q Now, the -- you know now from having looked at the
5 records that the call came into your son, I'm sorry, grandson,
6 the Defendant, about 5:17 a.m.; correct?

7 A Yes, sir.

8 Q Okay, by the way, you didn't -- there came a time, March
9 14th of 2006, that you had a conversation with Investigator
10 Dustin Morris.

11 A I don't know the date but I did have a conversation.

12 Q Okay, and that was with the permission of your attorney,
13 Mr. Colvin, who sits right here?

14 A Oh, yes, sir.

15 Q And even though you and Mr. Colvin had spoken about it he
16 gave you Miranda warnings.

17 A Yes, sir.

18 Q Okay, and you understood what the Miranda warnings were.

19 A Yes, sir.

20 Q And you answered some of his questions.

21 A Yes, sir.

22 Q Now, at that point in time when you answered the
23 questions you didn't have -- had -- you didn't have a chance
24 to look at those phone records; isn't that true?

25 A That's true.

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1 Q Okay, and in that, you correct me if I'm wrong, in that
2 conversation that you had with him you said on the
3 first occasion that you spoke to Ms. Debbie, the victim's mom,
4 that you had made the phone call; correct?

5 A Yes, sir.

6 Q Okay, but you said to him on sometime in March, you said
7 to him in regard to the second phone call that she called, she
8 being Belinda's mom, Ms. Debbie; didn't you say that?

9 A I don't remember.

10 Q Okay, you know, of course, that that's -- that has been
11 recorded that conversation.

12 A I guess.

13 Q Okay, would listening to that part of the conversation
14 refresh your memory?

15 A It would, but I don't ---

16 MR. MODICA: May we have this marked, please?

17 THE COURT: Yes.

18 (Whereupon, State's Exhibit Number 24 [Taped Statement]
19 marked for identification.)

20 MR. MODICA: One moment to boot it up, Your Honor.

21 (The following portion of State's Exhibit Number 24 played in
22 open court [Reporter's Note: transcribed to best of ability]:

23 "The following is a statement of Shirley Silvers Ward, white
24 female of 1108 Lilac Lane in Summerville, South Carolina. Ms.
25 Ward's date of birth is [REDACTED].")

1 Q That voice is Investigator Dustin Morris's and you
2 remember that?

3 A Yes.

4 Q I'm just going to jump ahead somewhere in here to hear
5 your voice, all right, so you can say that that's your voice.
6 (The following portion of State's Exhibit Number 24 played in
7 open court [Reporter's Note: transcribed to best of ability]:
8 "Go back to Friday". "Absolutely." "Okay, well".)

9 Q That's your voice.

10 A Yes, sir.

11 Q Okay, listen to this part here if you would.
12 (The following portion of State's Exhibit Number 24 played in
13 open court [Reporter's Note: transcribed to best of ability]:
14 "... and I was there fixing dinner. They went in there and
15 laid down and then Debbie called back and she said...")

16 Q Did you hear that, "Debbie called back."

17 A I don't remember but I heard it but I don't remember
18 whether she called or I did.

19 Q You said that. Okay, so, if you said that, ma'am, and
20 you didn't have those phone records, you would have been
21 wrong; correct?

22 A I guess.

23 Q Well, you said here back; right, you agree with that?
24 You have to say yes or no, ma'am.

25 A Oh, yes, sir.

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1 Q Okay, and you're now testifying today after looking at
2 the records that you, in fact, called her; right?

3 A I think I did. I don't remember.

4 Q Okay, so, are you telling our jury there's a lot about
5 what happened that you don't remember?

6 A Excuse me?

7 Q Are you telling our jury that there's a lot that happened
8 that you don't remember?

9 A No, sir. I just -- I don't know.

10 Q Okay, would it be wrong of me to say that you were
11 mistaken here when you told him that? If you said Ms. Debbie
12 called you and you know she didn't because you saw the
13 records, you would have been wrong back then, is that a fair
14 thing to say?

15 A I guess. I don't know.

16 Q Okay, now, when you spoke to Ms. Debbie both times;
17 right?

18 A Right.

19 Q She wanted to speak to her daughter Belinda, didn't she,
20 both times?

21 A Not the first time.

22 Q Okay, and the second time she was kind of insistent upon
23 speaking to her; right?

24 A No, she just told me that she wanted to talk to Belinda
25 about it and she had got the kids, and I said, "All right,

1 wait a minute, " and I went in there and she was asleep.

2 Q Okay, but you told our jury, you correct me if I'm wrong,
3 you told our jury that at some point Belinda was in the
4 bedroom, she was awake and asked you to call her mom; isn't
5 that what you testified to our jury a little while ago?

6 A I don't think so.

7 Q Okay, but you remember her being awake and talking about
8 her mom to you?

9 A Not in the bedroom.

10 Q All right, how about if we take some time prior to being
11 in the bedroom she spoke to you about calling her mom;
12 correct?

13 A No, sir.

14 Q Are you saying that the victim never asked you to talk to
15 her mom?

16 A Not in the bedroom.

17 Q Ma'am, I'm sorry, anywhere during the course of these
18 events did she ask you to speak to her mom? Did Belinda ask
19 to speak to her mom?

20 A To speak to her mom, no. She said just she'd call her.

21 Q Now, because she wasn't taped up or anything, she could
22 have easily made the phone call to her mother; right?

23 A Yes, sir.

24 Q But she didn't; you did.

25 A She was out in the little house packing up the stuff.

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- 1 Q Okay, but the little house is steps away from your house;
2 right, and she could have walked from the little house, gone
3 into your house where the phone is in the kitchen, picked it
4 up and called her mom herself; right ---
- 5 A Yeah.
- 6 Q --- because she wasn't bound or tied up or anything.
- 7 A No.
- 8 Q She wasn't forced to stay in the little house by Nicholas
9 ---
- 10 A No, sir.
- 11 Q --- right?
- 12 A Right.
- 13 Q Okay, so, she could have gone and talked to her mom
14 herself; right?
- 15 A Yeah, if she wanted to.
- 16 Q She wanted to, but she never got to; isn't that right?
- 17 A She didn't want to.
- 18 Q Oh, she didn't want to.
- 19 THE COURT: I believe she said if she wanted to.
- 20 Q By the way when you got there it was dark; wasn't it?
- 21 A At where?
- 22 Q When you got to Belinda's trailer?
- 23 A No, it wasn't. It was daylight when my grandson woke me
24 up.
- 25 Q So, when he woke you up at 6:00 a.m. it was daylight out,

1 correct, that was your testimony to our jury?

2 A I think so.

3 Q Showing you State's Exhibit Number 14A, two photographs
4 here, ma'am.

5 A Okay.

6 Q We're close together but you need to speak into the
7 microphone.

8 A Yes, sir, I see it.

9 Q Okay, this bureau and all this stuff, all theses boxes,
10 they weren't there on the date that this happened.

11 A No, sir.

12 Q Okay, so, this photograph really doesn't fairly show that
13 room or what was in that room the day that this event
14 happened; does it?

15 A All this stuff was in this room.

16 Q Okay, when you say this stuff you're referring to some
17 stuff on the right-hand side?

18 A Right-hand side in their little closet over there.

19 Q This right-hand side of this photograph all that stuff
20 was already there? Is that what you're saying, ma'am?

21 A Yes, sir.

22 Q And this stuff that's in 14B that wasn't there either;
23 was it, the day that this incident happened?

24 A No, sir, that was after Debbie got killed.

25 Q Okay, so, really neither one of these photographs really

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1 are fair to show this jury about how the little house looked;
2 isn't that true? They don't really show how it looked back on
3 January 29th; does it?

4 A Well, I was more or less showing the basic how it was
5 built.

6 Q And it was you, it was you and your daughter that took
7 these photographs; wasn't it?

8 A No, sir, just me.

9 Q Just you? Were you the person that took photographs of
10 Belinda's trailer?

11 A No, sir.

12 Q That was your daughter?

13 A I don't think so.

14 Q Okay, you don't know who took them?

15 A No, sir.

16 Q Okay, I'm showing you, I'm showing you 6A and 6B. Do you
17 see where I'm referring to?

18 A Yes, sir.

19 Q Okay, now, you told our jury that you didn't park in the
20 front.

21 A No, sir, I didn't because her mom's car was right there.

22 Q Okay, now, I'm going to put my finger where her mom's car
23 was; okay. Do you see my finger there?

24 A Yes, sir.

25 Q Okay, in regard to both of these -- I'm going to keep my

1 finger there. In regard to both of these photographs,
2 wouldn't you agree that there's lots of parking up
3 here and lots of parking on the side, that you didn't need to
4 go around the back; isn't that true?

5 A I always go around the back.

6 Q Okay, but that's not my question.

7 A Oh, yeah, I mean, I could, I guess.

8 Q Plenty of parking. Would you agree? Yes or no.

9 A Oh, yes, sir.

10 Q Thank you very much. I'm going to keep my finger there.
11 I'm going to show the jury, all right.

12 A Okay.

13 Q Wasn't it, wasn't it Nicholas that told you to go around
14 back?

15 A No, sir.

16 Q No, sir?

17 A No, sir.

18 Q Okay, did Nicholas tell you that the front door was going
19 to be left open? Didn't he tell you that?

20 A No, sir.

21 Q He didn't? He didn't tell you that Belinda told him
22 that she would leave the front door open?

23 A No, sir.

24 Q Now, when you were in the back, parked in the back you
25 could see the back door?

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- 1 A Yes, sir.
- 2 Q And you saw when they came out?
- 3 A Yes, sir.
- 4 Q Okay, didn't your grandson, the Defendant, didn't he drop
- 5 her on the ground?
- 6 A I don't know. I don't think so.
- 7 Q Ma'am, you were, you were there, you were waiting for
- 8 them to come out.
- 9 A Right.
- 10 Q You said you saw them come out. My question to you,
- 11 ma'am, is did you see the Defendant drop her on the ground?
- 12 A No, sir.
- 13 Q Okay, by the way, you all have huddled up and met to get
- 14 your testimony ready for trial, correct?
- 15 A I did what now?
- 16 Q You've met with Mr. Goude?
- 17 A Yes, sir.
- 18 Q Okay, and when you met with Mr. Goude, your grandson, the
- 19 Defendant, was present, your daughter was present. Tell us,
- 20 tell us all the people.
- 21 A My daughter was present but my grandson wasn't when I met
- 22 with Mr. Goude.
- 23 Q Okay, are you, are you telling our jury that on no
- 24 occasion prior to coming in and testifying that you weren't in
- 25 the presence of your grandson when the testimony that you all

1 were going to give here was talked about? Is that your
2 testimony?

3 A No, sir.

4 Q Okay, you never met?

5 A I was -- went to the door. We had recessed or something
6 and I went and asked my daughter if she wanted a sandwich and
7 my grandson. I told him, God, he had got fat and that's all I
8 said to him.

9 Q I don't think you're understanding my question. I don't
10 mean ---

11 THE COURT: He's not talking about today. He's
12 talking about before we came today.

13 A That's what I'm talking about before I come, yes, sir.

14 THE COURT: Oh, okay.

15 A I'm talking about any time prior -- excuse me -- any time
16 prior, any time prior to this last couple of days in which
17 we have been in court, anytime prior to that have you been
18 present when you all talked about the testimony? Haven't you
19 been?

20 A No, sir.

21 Q No, never been in a room with him.

22 A I have later but no -- don't know what you mean.

23 Q Okay, all right, I'm really not trying to confuse you.
24 I'm not talking about today. I'm not talking about yesterday
25 and I'm not talking about the day before yesterday. I'm not

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1 talking about Wednesday, Thursday, Friday. I'm talking about
2 any days prior to Wednesday, Thursday or Friday, were you ever
3 in a room with Mr. Goude and your grandson and anyone else,
4 let me finish my question, and talked, even a little bit,
5 about coming to testify?

6 A No, sir.

7 Q You talked to your daughter about your testimony; right?

8 A I don't know.

9 Q Well, did you talk to your -- did ---

10 A But I talked to her about coming here.

11 Q Okay, did you ever talk about what you would testify
12 about and what she would testify about?

13 A No, sir.

14 Q Never had that kind of conversation?

15 A Not until we talked to the lawyer.

16 Q Okay, all right, now, you remember when the police came
17 to your house on January 31st of 2006. You have to answer yes
18 or no.

19 A Yes.

20 Q Thank you. I know it's difficult but otherwise they
21 can't take down the record you nodding your head yes.

22 A That's right.

23 Q And I don't mean to ---

24 A That's all right.

25 Q Okay, you knew why they were there.

1 A Not -- well, he coming looking for Nick, no, I didn't,
2 not then.

3 Q Okay, all right.

4 A When they first got there.

5 Q But you have had a conversation with Investigator Dustin
6 Morris over the phone prior to him coming.

7 A Yes, sir; yes.

8 Q And he asked you to come down to Georgetown so he could
9 talk to you about what happened; isn't that right?

10 A Yes, sir.

11 Q And for whatever reason you didn't come down to
12 Georgetown; isn't that true?

13 A No, sir.

14 Q But he came up to see you.

15 A Yes, sir, him and Captain Marsh.

16 Q Okay, and prior to them coming you knew that they were
17 going to talk to you about allegations about kidnapping in
18 which the allegations were that your grandson kidnapped
19 Belinda.

20 A Yes, sir.

21 Q Okay, so, when they showed up there and they started
22 talking to you it's not like, you know, you freaked out, "Oh,
23 my gosh, what are they doing here, what a surprise"; correct?

24 A Right.

25 Q You kind of expected them to come.

1 A Right.

2 Q All right, and can you tell us whether or that either on
3 that day or before that day that Investigator Morris told you
4 that he actually had a warrant for arrest for your grandson?

5 A No, sir.

6 Q Didn't tell you that, not that day either?

7 A No, sir.

8 Q All right.

9 A I didn't know that they had it until I seen his picture
10 on the TV.

11 Q You knew your grandson was on the run; right?

12 A I did after I had seen that on the TV, yeah, well, he had
13 left after they come.

14 Q Right, because he knew that they were looking for him.

15 A Right.

16 Q So, he took off.

17 A Right.

18 Q From his home that he had been for, for years.

19 A Well, they always run, all of them.

20 Q All of them run, okay.

21 A Yeah, all his brothers when the police come they take off
22 and go to the woods.

23 Q Okay, your husband, James, gave him permission to search
24 the vehicle; isn't that true?

25 A Yes, sir.

- 1 Q You handed the keys to Investigator Morris.
- 2 A Yes, sir.
- 3 Q You knew they were looking for evidence.
- 4 A Yes, sir.
- 5 Q And in fact you know that they found some evidence in
- 6 terms of duct tape in the vehicle; isn't that true?
- 7 A Well, he said it come from the truck.
- 8 Q Okay, well, didn't you see him take it from the truck?
- 9 A I seen him having some tweezers. I don't know where he
- 10 got it.
- 11 Q Okay, well, are you suggesting to our jury that the duct
- 12 tape that was found in that vehicle was planted by the police?
- 13 A No, I'm just saying what I seen.
- 14 Q Okay, okay, when the police were there your daughter
- 15 refused to give them accurate information about who she was;
- 16 correct?
- 17 A Right.
- 18 Q So, she lied to them.
- 19 A Well, she was -- had warrants on her.
- 20 Q So, she lied.
- 21 A I guess, yeah.
- 22 Q Okay, and it was you who told them who she really was.
- 23 A Right.
- 24 Q Now, when you went to Moncks Corner -- by the way, was
- 25 there a period in time when you were traveling that Belinda

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1 was laying down on the floor in the back and Nicholas was up
2 on his knees kind of leaning over the console and, you know,
3 looking out the window of the front windshield.

4 A No, sir.

5 Q That never happened?

6 A No.

7 Q Okay, when you got to Moncks Corner and you first saw the
8 duct tape isn't it true that he jerked the wheel because you
9 were trying to actually turn towards the Police Department?

10 A No, sir.

11 Q It was, it was your intention to go to the Police
12 Department because of what you saw; wasn't it?

13 A It was, yes.

14 Q Okay, because you were deeply upset about the fact that
15 your grandson had taped up Belinda.

16 A Exactly. I had seen that tape on her arm.

17 Q And you knew he had done it.

18 A No, I didn't. I didn't know who done it but I knew she
19 had tape on her arm.

20 Q Well, all right, well, when he first came out of the
21 house and you say that she was wrapped up in a comforter then.

22 A Right.

23 Q Okay, and you asked, correct me if I'm wrong, you asked
24 what's going on and he said, ``She won't talk to me. I'm
25 going to take her to the house.''

1 A No, she didn't -- he did not -- didn't say nothing. He
2 just told me to lift the seat up, they was going to ride in
3 the back laying down.

4 Q I want to make sure. That's not what you told
5 Investigator Morris when you had that conversation in March of
6 2006.

7 A I don't think so.

8 Q Okay, let's see if we can refresh your recollection. You
9 let us know; okay?

10 MR. MODICA: Your Honor, may I approach with counsel
11 for a moment?

12 (Whereupon, a Bench conference was held in the presence,
13 but out of the hearing, of the jury.)

14 THE COURT: All right, you may proceed.

15 MR. MODICA: Yes.

16 (The following portion of State's Exhibit Number 24 played in
17 open court [Reporter's Note: transcribed to best of ability]:

18 ("He had Belinda back up in the thing, dropped her...and I
19 said, well, what is going on and he says she won't talk to me.
20 He says I'm going to take her on to the house.")

21 BY MR. MODICA:

22 Q That refresh your recollection, ma'am?

23 A That was, that was in Moncks Corner.

24 Q Weren't you referring to when you first picked her up?

25 A No, sir. I was referring to in Moncks Corner.

Shirley Ward - Cross by State

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- 1 Q All right.
- 2 A Mr. Morris knows that.
- 3 Q All right, you went in the house; didn't you?
- 4 A I went in what house?
- 5 Q You went into Belinda's house; didn't you?
- 6 A No, I didn't.
- 7 Q Well, didn't you tell Investigator Morris that you went
- 8 in to get the Defendant's coat?
- 9 A I reached in the back door. That's all I did.
- 10 Q Okay, my question to you, ma'am ---
- 11 A I did not go in.
- 12 Q --- did you, did you tell him that you went in the
- 13 house to get the coat?
- 14 A No.
- 15 (The following portion of State's Exhibit Number 24 played in
- 16 open court [Reporter's Note: transcribed to best of ability]:
- 17 "And so we went, I said, where is your coat, I said, where is
- 18 your coat, he said, it's right there on the table at the back
- 19 door and I said all right. So, I got out the truck and went
- 20 to the back door, reached in, got his coat off the table.")
- 21 Q Okay, in order to get to the table you had to go in;
- 22 correct?
- 23 A No, sir, because it's right there at the back door.
- 24 Q The table is right there at the back door.
- 25 A Yes, sir. I went to close the door and I seen his coat

1 and I grabbed it.

2 Q Now, later on in Moncks Corner isn't it true you said,
3 ``What's going on, '' and that he said, ``That's the only way
4 she will talk to me, '' and that had to do with the tape.

5 A Tape on her hands.

6 Q So, that part is true.

7 A When we was in Moncks corner, yes, sir.

8 Q Okay, you lifted up the back seat; correct?

9 A Yes, sir.

10 Q And that's because he asked you to?

11 A Yes, sir, when they got to the truck.

12 Q And later on when you were talking to Dustin,
13 Investigator Dustin Morris you told him you asked your
14 grandson, ``What's her hands doing tied up, '' and you said,
15 ``That's the'', you said that he said, so in other words,
16 you're quoting your grandson, ``That's the only way I can get
17 her to talk to me. ''

18 A Right.

19 Q He said that to you?

20 A Yes, he said that to me.

21 Q You knew he had done wrong; didn't you?

22 A When I seen the tape I did.

23 Q Okay.

24 A That's when I threatened to take them to the Berkeley
25 County Police Department.

Shirley Ward - Cross by State

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1 Q Ma'am, but you didn't; did you?

2 A No, because they both started hollering, him and Belinda,
3 "Don't do that."

4 Q I got you, but you knew that he did something terribly
5 wrong by taping her up and instead of driving to the police
6 like you said you were going to do you drove home to
7 Summerville.

8 A Exactly.

9 Q And really at that point in time when you saw her with
10 the tape you had it in your mind that she had been abducted or
11 kidnapped or taken against her will; isn't that true?

12 A Not the way she talked it wasn't. They was just all
13 doped up.

14 Q Okay, I'm not sure you're answering my question. My
15 question is at that point when you saw her taped up ---

16 MR. GOUDE: Objection, Judge. The witness has
17 answered the question. It wasn't ---

18 THE COURT: Well ---

19 MR. MODICA: I'll rephrase it.

20 THE COURT: Okay.

21 BY MR. MODICA:

22 Q At that point when you saw her hands duct taped, tied
23 Up, in your mind you thought that she had been abducted or
24 kidnapped or taken away, are you looking at something, ma'am?

25 MR. GOUDE: I object because he's already asked the

1 question and she said no ---

2 THE COURT: Well, just finish the question.

3 MR. GOUDE: --- she didn't. She thought they were
4 doped up. I object.

5 THE COURT: Okay, finish the question, and then if
6 you have any objection.

7 Q Did you have it in your mind that they had -- that he had
8 done wrong, something wrong in terms of abducting her, taking
9 her against her will? Did you have that in your mind right
10 there and then? Do you understand my question?

11 MR. GOUDE: I object on that. I think the witness
12 already answered the question no, she said.

13 THE COURT: I overrule the objection. It's cross
14 examination.

15 Q You can answer the question, ma'am.

16 A No, because they was all doped up like I said.

17 Q So, you thought that was okay.

18 A The way they was doing, yeah.

19 Q Okay, all right, and are you telling our jury, ma'am,
20 that nowhere during the course of time that they -- that you
21 carried them back from Georgetown to Summerville that you ever
22 heard her arguing, screaming or ---

23 A No, sir.

24 THE COURT: Her who?

25 Q Her being Belinda Mitchum?

Shirley Ward - Cross by State

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1 A No, sir.

2 Q Did you ever hear your grandson yelling or arguing at
3 her?

4 A No, sir.

5 Q So, as far as you're concerned everything was peachy
6 keen, hunky dory.

7 A Well, yes.

8 Q Okay, by the way, you've told our jury that Belinda
9 Mitchum has driven that white Ford Escape, the one that was
10 parked in front of her house.

11 A Yes.

12 Q She has driven that to your house before; correct?

13 A Oh, yes, sir.

14 Q Quite a few times.

15 A Yes.

16 Q Okay, so, she simply could have gotten into that vehicle
17 and come up to your house in her own vehicle; isn't that true?

18 A Well, it wouldn't have held all her stuff.

19 Q I understand, but she could have driven it.

20 A If she had wanted to, but like I said, it wouldn't hold
21 all her stuff.

22 Q I got you, but let me see if I understand, if she had
23 driven the white car up there and had met you up there and had
24 said, "I want X, Y and Z, I want these particular boxes,"
25 you could have loaded them up into your vehicle as well as the

1 white Ford and driven her back and then just gone home;
2 correct?

3 A Yes, sir.

4 Q All right, and that certainly, you would agree with me,
5 that certainly would have been easier than driving her down,
6 driving from your house, picking her up, bringing her back to
7 the house and then bringing her back home; isn't that true?

8 A That's a lot easier, yes.

9 Q Right, but you all didn't do that, did you?

10 A No, sir.

11 Q And that's because your grandson Nicholas insisted that
12 you drive him down there; isn't that true?

13 A No, sir.

14 Q He didn't insist?

15 A No, sir.

16 Q Ma'am, doesn't Nicholas control you?

17 A No, sir. He doesn't. He's got a scar on the back of his
18 head right now that shows how much he controls me.

19 Q Did you tell this man in that taped interview that he
20 controls you? Did you tell him that?

21 A No, I did not and you can do the tape.

22 Q Did you -- did he also treat you bad, yell at you?

23 A Who?

24 Q Nick.

25 A No, sir.

Shirley Ward - Cross by State

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1 Q Okay, did you tell him that he yelled at you?

2 A No, sir.

3 (The following portion of State's Exhibit Number 24 played in
4 open court [Reporter's Note: transcribed to best of ability]:
5 "...and you would do it. Oh, yeah. He had a little control
6 over you, huh? Oh, yeah, they all did and that's what
7 made...)

8 A I didn't hear that.

9 Q You want me to play that back?

10 A Yes, sir.

11 Q Okay.

12 (The following portion of State's Exhibit Number 24 played in
13 open court [Reporter's Note: transcribed to best of ability]:
14 "...he don't get in any -- much trouble...anyway...I tried to
15 bring up the drugs and nobody wants to hear about drugs. Why.
16 I don't know. I don't either. They don't -- well, looks like
17 Jennifer she's in there. She does not need to be in here.
18 She needs to be in a home. Yeah, she's, she's out there. She
19 is, I mean...)

20 Q I'm in the wrong spot. I'm sorry.

21 (The following portion of State's Exhibit Number 24 played in
22 open court [Reporter's Note: transcribed to best of ability]:
23 "...treat you bad, yell at you and stuff? Oh, yeah, they all
24 yell, but I yell right back and that's...he treats you, he
25 treats you badly don't he. Oh, yeah, all of them do. I'm

1 talking about Nick. Oh, yeah, Nick does, I mean, he yells at
2 me and screams and sometimes when I get in his business.
3 That's why I try to stay out of their business. But then he
4 tries to involve, too, coming to you for money or rides or
5 whatever. Rides...to the store and get a pack of cigarettes
6 and loves cigarettes, go to the store and get us some drink,
7 Pepsi. And you would do it. Oh, yeah. He had a little
8 control over you, huh? Oh, yeah, they all did.")

9 A I don't understand a thing they was saying. All of it is
10 a bunch of gibberish.

11 Q So, it's a bunch of gibberish when you said, "Oh,
12 yeah," to him say, "So, he has control over you."

13 A No, he don't have control over me.

14 Q Okay, how about yelling and screaming?

15 A Well, we all do that, I think.

16 Q Okay, but he yells and screams at you?

17 A Well, sometimes we all get in an argument.

18 Q Okay, but he's your grandson; isn't he?

19 A Yes, sir.

20 Q You would expect him to have a little respect for you;
21 wouldn't you?

22 A Well, he does.

23 Q And he does that by yelling at you and telling you what
24 to do and go get him cigarettes and do this and do that and
25 controlling you?

Shirley Ward - Cross by State

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1 A He don't do all that, no.

2 Q Okay, you told Investigator Morris that you knew he had
3 done wrong and you said, ``You doggone right, that's no way to
4 do it.'' Didn't you say ---

5 A No, I didn't say that either.

6 Q You didn't, okay.

7 (The following portion of State's Exhibit Number 24 played in
8 open court [Reporter's Note: transcribed to best of ability]:
9 (``He was in the truck. So, she was, she was exposed at that
10 point. Yeah. So, you couldn't tell if she had tape on her
11 wrist or her ankles or anything at that point? I don't think
12 she did. I think he had done cut all that off and on her
13 shoe. All that would be because you were going to take him to
14 jail. Doggone right. Man, I was going to take both of them
15 there. So, you knew he had done wrong. You doggone right.
16 Man, that ain't no way to do, I mean, we went there'')

17 A I see what you talking about, yeah.

18 Q That's what, that's what you said.

19 A Yeah, yeah, in Moncks Corner.

20 Q Okay, so, right then and there you knew he had done
21 wrong.

22 A By taping her arms, yes.

23 Q Right, and instead of taking him to the police station or
24 letting Belinda go you carried on to Summerville.

25 A Because him and Belinda begged me not to. So, I didn't.

1 Q Because he told you, he jerked the wheel; didn't he?

2 A No, he didn't, didn't touch the wheel.

3 Q Didn't she beg you to let her out? She said she would
4 walk home?

5 A No, she did not.

6 Q Okay.

7 MR. GOUDE: I would object. If he wants to play the
8 next few seconds of the tape and he can hear what the witness
9 said when he asked the question.

10 THE COURT: Well, I, I ---

11 MR. MODICA: You can, you can go ahead and play
12 whatever portion that he wants.

13 THE COURT: Just go on to your next question.

14 BY MR. MODICA:

15 Q Again, at one point in time -- by the way, you said
16 Belinda worked -- had been working on and off; correct?

17 A Yes, sir.

18 Q And you told our jury Shoney's; right?

19 A Well, one place I think. I don't know the, remember the
20 name of it. I know I took her to work.

21 Q Okay, I can't help but think that you kind of neglected
22 to talk about Food Lion.

23 A Yeah, she worked there for a while. In fact, I got her
24 the job there.

25 Q Right, you got her the job there and the reason why she

Shirley Ward - Cross by State

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1 couldn't go back is because he beat her face so bad she
2 couldn't show up for work; isn't that true?

3 A No, he -- I don't know if he did or not. I didn't see.
4 All I did was seen Belinda. Belinda was the one that was
5 telling me this.

6 Q Belinda had told you many times that he beat her.

7 A No, she didn't. She told me that -- that's why she
8 didn't go back to Food Lion on account of her face was all
9 messed up.

10 Q Her face was all messed up; wasn't it?

11 A Yes, it was.

12 Q She couldn't be seen in public; could she?

13 A No, she couldn't. I wouldn't have.

14 Q Couldn't possibly go to work looking like that.

15 A Not with that, no.

16 Q And is it -- are you telling us that she didn't relate to
17 you that Nicholas had done that to her?

18 A No, she didn't. She just said, "I cannot go to work.
19 Don't be mad with me. I'm not going back there no more."
20 She quit ---

21 Q Okay.

22 A --- after I got her the job.

23 Q She quit. You were kind enough to get her a job. She
24 quit because her face was too beat up to show up in public;
25 isn't that true?

- 1 A Right.
- 2 Q All right, now, you all went to the doctor's on January
- 3 17th, and you have to answer yes or no.
- 4 A Oh, yes, sir.
- 5 Q Thank you. The people who went to the doctor's is you,
- 6 Belinda and your daughter, the Defendant's mother.
- 7 A Yes, sir.
- 8 Q The three of you went.
- 9 A Yes, sir.
- 10 Q And when -- it's Sherry; isn't it?
- 11 A Yes, sir.
- 12 Q When Sherry went in ---
- 13 A Yes, sir.
- 14 Q --- you all left and drove her to McDonald's.
- 15 A McDonald's..
- 16 Q You waited until Sherry went in.
- 17 A Right.
- 18 Q Because you didn't want her to know.
- 19 A No, I didn't want her to meet Debbie because her and
- 20 Debbie would have fought.
- 21 Q Okay, because of what -- the kind of stuff Nicholas was
- 22 doing to her; isn't that true?
- 23 A No, because of they are and Debbie and Belinda had got
- 24 into it at the trailer.
- 25 Q Okay.

Shirley Ward - Cross by State

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1 A That's when I had to go up there and get Belinda and the
2 youngins.

3 Q All right, and all of that is because the way that your
4 grandson, Nicholas treated Belinda; isn't that true?

5 A No, it ain't. It was because of her little girl calling.

6 Q Okay, now, you -- on January 17th of 2006, you helped
7 Belinda get away; didn't you? Didn't you?

8 A On what? January what?

9 Q Well, did she take one article of clothing except for the
10 clothes on her back when you drove her over to McDonald's to
11 meet her mom?

12 A No, she did not.

13 Q Just the clothes on her back?

14 A Because she was coming back to the house.

15 Q Just the, just the clothes on her back; isn't that true?

16 A Right, right.

17 Q Okay, now, as far as the date of January 29th, that
18 Sunday, it was true that arrangements had been made and you
19 knew about them, that she was supposed to pick up her clothes
20 Tuesday the 31st?

21 A No, I did not know nothing about that.

22 Q Okay, did you not start out your interview with
23 Investigator Morris by saying, "Supposed to come down
24 Tuesday"; didn't you say that? "Told James about it and he
25 said no"? Isn't that the way you began the interview with

1 him?

2 A I don't remember.

3 Q Would you like me to refresh your memory on that as well?

4 A Yes, sir.

5 (The following portion of State's Exhibit Number 24 played in
6 open court [Reporter's Note: transcribed to best of ability]:

7 ``...so she was living there at your place for a while. Oh,
8 yeah...)

9 MR. MODICA: I'm sorry, wrong section.

10 (The following portion of State's Exhibit Number 24 played in
11 open court [Reporter's Note: transcribed to best of ability]:

12 ``...Okay, can you kind of walk me through what you knew about
13 that day? Okay, well, can I go back to Friday? Absolutely.
14 Well, my husband and I...Belinda was supposed to come down
15 Tuesday.'')

16 Q Belinda was supposed to come that Tuesday, that's what
17 you told him.

18 A I must have. It's on the tape. I don't remember.

19 Q Okay, all right, so, you're wrong about that, ma'am?
20 Would you agree with me that you were wrong about that?

21 A Well, I don't -- I guess so because it's on the tape.

22 Q Okay, now, you and Dustin Morris talked about the
23 injuries that Belinda had sustained as a result of this
24 incident. Do you remember that?

25 A Well, he said, told me that Nicholas must have beat her

Shirley Ward - Cross by State

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1 where I couldn't see it because I didn't see nothing.

2 Q Okay, all right, and he said to you, "That girl was
3 black and blue from head to toe"; isn't that true?

4 A No, sir.

5 Q And that you said, "Well, not in her face."

6 A Right, I did say that.

7 Q And then he said ---

8 MR. GOUDE: Objection to whatever a deputy said.
9 That's hearsay, Judge.

10 THE COURT: Well, but I think this had to do with the
11 interview of her. I'm going to allow it.

12 Q He said, "Not in her face," and then you said, "Because
13 that's where he usually hits her," meaning her face.

14 A No, I did not say that.

15 Q Okay.

16 A But getting back to Tuesday I remember that.

17 MR. MODICA: Your Honor.

18 THE COURT: Well, wait, no, he'll ask you a
19 question. Just ---

20 A Oh, okay. I remember now.

21 (The following portion of State's Exhibit Number 24 played in
22 open court [Reporter's Note: transcribed to best of ability]:

23 "...and James said no because Nick was working over there at
24 body shop and he had off that Tuesday but he told James no,
25 there ain't no way, and I said...Belinda I said, he

1 said...come back here Sunday night. I said I don't know.
2 I'll ask Nick. So, then Saturday...)

3 MR. MODICA: I'm sorry. I'm in the wrong place
4 again.

5 Q You did say, "That if you lay one hand on that girl I'll
6 call the law." Didn't you say that?

7 A I probably did, yeah, at the little house when they went
8 in.

9 Q Because you were worried about him hitting her; weren't
10 you?

11 A No, I was just -- didn't want them to be getting in an
12 argument and fighting because I had seen they was both drunk.

13 Q Okay, you were, you were worried about her; weren't you?
14 Weren't you worried about her? You didn't say, "Belinda, if
15 you lay one hand on Nicholas I'm calling the law." You said,
16 "Nicholas, if you lay one hand on her I'm calling the law."

17 A I did say that, yes.

18 Q Okay, all right.

19 (The following portion of State's Exhibit Number 24 played in
20 open court [Reporter's Note: transcribed to best of ability]:
21 "...and that was it. That was it...but I think you're now
22 starting to see a picture that you didn't know before. That
23 girl when she came to us at the Sheriff's Office...)

24 MR. GOUDE: Objection to playing.

25 THE COURT: Yeah, that, whoa, whoa, whoa, stop, stop

Shirley Ward - Cross by State

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1 it. Stop it.

2 (The following portion of State's Exhibit Number 24 played in
3 open court [Reporter's Note: transcribed to best of ability]:
4 ``...she was black and blue from head to toe. But her
5 face.'')

6 MR. MODICA: The part, the part's right up here,
7 sir.

8 THE COURT: Well, we don't want to hear what the
9 detective, his editorials ---

10 MR. MODICA: Okay, yes.

11 THE COURT: --- on the, on the thing. We want to
12 hear what she had to say.

13 MR. MODICA: Yes, sir.

14 THE COURT: If it's a direct question, but not sort
15 of editorial comments.

16 MR. MODICA: All right.

17 BY MR. MODICA:

18 (The following portion of State's Exhibit Number 24 played in
19 open court [Reporter's Note: transcribed to best of ability]:
20 ``When she came to us at the Sheriff's Office she was black
21 and blue from head to toe.'')

22 MR. GOUDE: Objection to that.

23 THE COURT: That's a -- no, no.

24 MR. MODICA: This is the part.

25 (The following portion of State's Exhibit Number 24 played in

1 open court [Reporter's Note: transcribed to best of ability]:
2 ``...no, her face wasn't. Not her face. Because that's
3 usually where.'')

4 THE COURT: Stop it, stop it when I say stop it.
5 That's all you need to do. You don't need to argue. You
6 don't need to argue with me. Let me let the jury go to the
7 jury room just a minute.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 MR. MODICA: Can I play the portion?

11 THE COURT: Yes, sir. (The following portion of
12 State's Exhibit Number 24 played in open court [Reporter's
13 Note: transcribed to best of ability]: "When she came to us
14 at the Sheriff's Office she was black and blue from head to
15 toe. But her face wasn't. Not her face. Because that's
16 usually where he hits her. Yeah, not her face. It was, it
17 was.")

18 THE COURT: All right, what's your objection?

19 MR. GOUDE: I don't object to him playing the lady
20 saying, ``That's usually where he hits her,' ' but not for the
21 deputy saying, ``She was black and blue from head to toe.' '
22 We've seen the photographs. I don't remember seeing her
23 black and blue from head to toe. So, that's the deputy's, who
24 is the prosecuting officer ---

25 MR. MODICA: I specifically asked her if that's what he

Shirley Ward - Cross by State

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1 said and she said no. So, it's a prior inconsistent
2 statement. She's denying ---

3 THE COURT: It's a prior ---

4 MR. MODICA: --- that that conversation took place.

5 THE COURT: Well, it's a prior inconsistent -- she's
6 saying it's not a prior inconsistent statement of hers.

7 MR. MODICA: Your Honor, otherwise it's not within the
8 context. I asked her, I asked her, "Did the following
9 conversation take place," and she said no.

10 MR. GOUDE: Well, he can play it if she said, "He
11 usually hits her in the face." That's what his question was.
12 She says, "I don't remember saying that." So, he can ---

13 MR. MODICA: It's not like the jury just didn't ---

14 MR. GOUDE: The prosecutor can play the tapes where
15 she said, "He usually hits her in the face."

16 THE COURT: All right, one, one at a time.

17 MR. MODICA: Well ---

18 THE COURT: And let me ---

19 MR. MODICA: Yes, sir.

20 THE COURT: --- let me hear when she says what you say
21 she said about not in the face.

22 (The following portion of State's Exhibit Number 24 played in
23 open court [Reporter's Note: transcribed to best of ability]:
24 "...She was black and blue from head to toe. But her face
25 wasn't. Not her face. Well, that's usually where he hits

1 her. Yeah, not in the face so it was where you couldn't see
2 it, and that.'')

3 THE COURT: You can start where she says ``not the
4 face,'' and then he says, ``not the face,'' and she says,
5 ''that's usually where he hits her.'' That's all you need to
6 play. All right, bring the jury back in.

7 MR. MODICA: Your Honor, can I have a moment to get
8 there?

9 THE COURT: Yeah.
10 Bring in the jury.

11 MR. MODICA: Your Honor, I'm going to attempt to find
12 something else so I know exactly where it is. Can I do that
13 outside the presence?

14 THE COURT: Oh, yeah, yeah.

15 MR. MODICA: Thank you, sir. I got the two spots.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: Counsel.

19 MR. MODICA: I can go ahead, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. MODICA:

22 Q Now, do you deny telling Investigator Morris that where
23 he usually, that where your grandson usually hits Belinda is
24 in the face?

25 A I don't deny it because I ain't never said it.

Shirley Ward - Redirect by Defense

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1 Q Never said it.

2 (The following portion of State's Exhibit Number 24 played in
3 open court [Reporter's Note: transcribed to best of ability]:

4 "...Not her face. Because that's usually where he hits her.

5 Yeah not her face. It was, it was where you couldn't.'')

6 Q Isn't it true that you also told him that in the past
7 your grandson has whipped the fool out of Belinda?

8 A No, I haven't.

9 Q You didn't say that either?

10 (The following portion of State's Exhibit Number 24 played in
11 open court [Reporter's Note: transcribed to best of ability]:

12 "...he's whipped the fool out of Belinda before but that
13 was.'')

14 Q Thank you. I have no further questions.

15 THE COURT: All right, redirect.

16 REDIRECT EXAMINATION

17 BY MR. GOUDE:

18 Q All right, the prosecutor has played the tape where when
19 you made your statement a year ago in March of '06 to the
20 police, you said at that time that you and your husband had
21 talked and that originally, this is what was on the tape now,
22 basically, as the prosecutor played it it said that you had
23 told the deputy on the tape when you talked with the deputy
24 that's on this tape-recorded statement back in March of '06 at
25 that time, Mrs. Ward, you told the deputy that the girl was

1 supposed to come to you all's house on Tuesday to get the
2 stuff. Why did you bring Nicholas that Sunday morning
3 to get her stuff instead of waiting for her to come Tuesday to
4 get her stuff?

5 A Because Nick was working and he'd took off work and my
6 husband and I discussed it, he would have off from work.
7 That's what I remember.

8 Q He would have stayed off work on Tuesday?

9 A Yes, sir to help load the stuff.

10 Q So, you wanted her to get her stuff on Sunday while
11 Nicholas was there?

12 A Yes, sir.

13 MR. MODICA: Objection.

14 THE COURT: Well, I'll allow it.

15 Q And when -- as they had on the tape something about when
16 the prosecution witness said that she had her kids at 8:30 did
17 you ask her if she wanted you to call her mother?

18 MR. MODICA: Your Honor, I never went into that. I
19 don't -- so, I object.

20 MR. GOUDE: Well, I'll go ahead and do it then.

21 MR. MODICA: Well, I object. I object on the
22 grounds it ---

23 THE COURT: Well, but this is redirect, I sustain
24 the objection.

25 MR. MODICA: Thank you, Your Honor.

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1 THE COURT: Move on to the next question.

2 BY MR. GOUDE:

3 Q Now, the prosecutor asked you could she have come from
4 the garage apartment and used your kitchen phone that January
5 the 29th morning while you all were over there to have called
6 her mother.

7 A Yes, sir.

8 Q And your answer to him was what?

9 A I don't ---

10 Q When you asked him -- he asked you the question a
11 while ago, he asked you could she have used your phone that
12 Sunday to call her mother and you said what?

13 A She was busy and she wanted me to call and tell her.

14 Q All right, now, on the tape did you actually say that to
15 the deputy, did you say on the tape that the girl said,
16 ``Would you call my mamma, the kids needed to be picked up,"
17 and you said, ``You can call," and she said, ``No, you call,"
18 and that you called her mother. Did you say that on the tape?

19 A I don't think I did.

20 Q Well, let's play it and see if you did do it.

21 MR. GOUDE: I don't know where it's at. Maybe you can
22 point to it. I can show, show you at about page -- let me see
23 what you asked on the tape so I can show you where it's at in
24 relation to that.

25 (Mr. Goude and Mr. Modica confer.)

1 BY MR. GOUDE:

2 Q And you had, when the prosecutor asked you the question
3 on cross why did you go to the back and you say you always go
4 around to the back of the house, why do you always go around
5 to the back of the house?

6 A Anybody's house I usually go to the back. I even go to
7 mine around the back. I don't never go in the front.

8 Q And the prosecutor asked you when they came out the back
9 door did you see them while they were coming out the back door
10 and stuff on cross. Did you say on the tape to the police
11 that when you first saw the girl coming out of the back door
12 coming to the truck that you figured she was asleep or drunk
13 or whatever?

14 A Yes, sir.

15 MR. MODICA: Objection as to the form.

16 THE COURT: Well, I'll allow the question. Go
17 ahead.

18 MR. GOUDE: Judge, the only other question I have is
19 a part there on the tape that I need to try to find. I need
20 to play it. So, I need the jury to go out while I find it and
21 play it so I only play the correct part.

22 THE COURT: All right, let me have the jury go to the
23 jury room just for a minute.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

1 MR. GOUDE: You mind hitting this thing for me? I can
2 show you where the spot is, your first question.

3 (Mr. Goude and Mr. Modica confer. Mr. Goude reviews
4 State's Exhibit Number 24.)

5 MR. GOUDE: That was the part. I think I got what I
6 was trying to find, Judge.

7 MR. MODICA: Your Honor, if we could play for you.

8 THE COURT: All right, let me hear what you're talking
9 about. Mr. Goude, let me hear what you're talking -- well,
10 let me hear what ---

11 MR. GOUDE: Okay.

12 THE COURT: --- what you're proposing to ask and first
13 let me hear your question to her.

14 MR. GOUDE: The question was did you tell the girl
15 when you all got to your house, that she said the girl said,
16 "Will you call my ma, the kids need to be picked up," and
17 did you, Mrs. Ward, tell her, "You can, you can call?"

18 THE COURT: All right.

19 A No, sir, she told me that ---

20 THE COURT: But wait, wait, wait, wait just a minute,
21 all right.

22 MR. GOUDE: That was my question that was on the
23 tape.

24 MR. MODICA: Yes, and before she answers that my
25 objection would be I never got into any of that on cross

1 examination about her calling.

2 THE COURT: Well, your cross examination was fairly
3 broad and you did talk about who called who when. So, I'm
4 going to let him ask it.

5 MR. MODICA: Okay, and I'm not sure that this is
6 inconsistent, well, or consistent.

7 THE COURT: Well ---

8 MR. MODICA: I don't even think it's on the matter.

9 THE COURT: Well, let me hear what it is.

10 MR. MODICA: Okay.

11 (The following portion of State's Exhibit Number 24 played in
12 open court [Reporter's Note: transcribed to best of ability]:
13 ``no, I said I've had it with you, too. I said, I've just had
14 it. I said you take the tape off her either the
15 law...Nicholas right then and there started peeling the tape
16 off because Belinda started squalling...the tape up, they sat
17 up then and we went on down. We got to the house and I parked
18 at the little house.'')

19 MR. GOUDE: That's all I have.

20 (The following portion of State's Exhibit Number 24 played in
21 open court [Reporter's Note: transcribed to best of ability]:
22 ``...I parked over there at the side because Josh had
23 parked...you can't get two cars in here...but anyway I parked
24 beside the little house and I told her it's starting to rain,
25 too, and I told him it's starting to rain. I said can you run

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1 in the house and get some bags...plastic bags and put in the
2 truck. He said all right, so, him and Belinda walked in the
3 little house and went and started packing all the stuff she
4 wanted and I went in my house and got the bags, took them out
5 there and gave them to them and that's when Belinda told me,
6 said, will you call my mamma and I said, no, you can all her
7 now. She said, yeah, but before 8:30 she said the kids have
8 to be picked up, I said...')

9 THE COURT: All right, I'll allow him to ask it and
10 play it. Let's just -- all right, bring in the jury.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right, you may proceed.

14 MR. MODICA: Is he asking the question or does you want
15 me to play?

16 THE COURT: Just ask the question and then play what
17 he wants you to play.

18 BY MR. GOUDE:

19 Q Mrs. Ward, when you talked with the deputy March of '06
20 did you tell him when you all got to your house at the garage
21 apartment that the prosecution witness asked you to call her
22 mamma about picking up the kids and you told her, "You can
23 call her," and she said, "No, you call?" Did you tell the
24 deputy that?

25 A I don't remember, but I probably did. I don't remember,

1 but I know I called her mamma.

2 Q Well, we would play that then and you can hear it.

3 THE COURT: All right, let's just play it and move on.

4 MR. MODICA: Okay, all right.

5 (The following portion of State's Exhibit Number 24 played in
6 open court [Reporter's Note: transcribed to best of ability]:
7 ``You can call her now she...before 8:30 she said the kids
8 have to be picked up. I said, she told me, said check the end
9 of the road or something or another and...anyway, I went and
10 called Debbie and...'')

11 MR. GOUDE: That's it.

12 MR. MODICA: That was it.

13 MR. GOUDE: We didn't hear it.

14 (The following portion of State's Exhibit Number 24 played in
15 open court [Reporter's Note: transcribed to best of ability]:
16 ``And then Belinda told me, said will you call my mamma and I
17 said, no, I said you can call her now, she said, yeah, before
18 8:30, she said the kids have...'')

19 MR. GOUDE: That's all I have, Judge.

20 THE COURT: All right, any recross?

21 MR. MODICA: No, sir.

22 THE COURT: All right, thank you. You can step down.
23 Call your next witness.

24 MR. GOUDE: Judge, the Defense rests.

25 THE COURT: All right, anything in reply?

1 MR. MODICA: May I have one moment, Your Honor?

2 THE COURT: Yes, sir.

3 MR. MODICA: No, Your Honor, no thank you.

4 THE COURT: All right, members of the jury panel
5 you've now received the evidence and the next portion of the
6 trial would be the arguments of the attorneys and my charge on
7 the law. I have taken the liberty of ordering some lunch for
8 you and it's supposed to be here around one. Would -- I've
9 got -- I have some matters to take up outside your presence
10 and what I would like to do is it might get here before one is
11 to go ahead and break for lunch, but of course don't leave
12 because it's coming here, and hopefully it'll get here a
13 little before one and, Mr. Foreman, once the jury has eaten
14 and is ready to come back if you'll just send word to the
15 bailiff and hopefully we'll be ready to start then because it
16 is Friday after 12 noon. We're not in a hurry but we would
17 like to use our time as efficiently as possible; and so, we
18 can be doing some things while you all are out and not have to
19 let you go out during the process. So, I'm going to excuse
20 you. Don't start discussing the case yet though because you
21 don't know the law that's applicable, I haven't charged you
22 the law and you haven't heard the summations by the attorneys.
23 So, have lunch and let me know, Mr. Foreman, when you're
24 ready to return.

25 (Whereupon, the following takes place outside the

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1 presence of the jury.)

2 THE COURT: Any motions by Defense?

3 MR. GOUDE: We would make a motion for a directed
4 verdict of not guilty on the grounds of insufficiency of the
5 evidence, Judge.

6 THE COURT: All right, that motion is denied.
7 There's certainly sufficient evidence from which a jury could
8 conclude that Mr. Parker committed either one or both of these
9 offenses.

10 Now, does the State have anything else on the charge?

11 MR. MODICA: Yes, Your Honor.

12 I would like to go back to -- I know that you now are
13 going to incorporate the language, that one sentence. So, I
14 don't have to argue that, but back to the burglary in the
15 second degree, once again, there hasn't -- the evidence is
16 that the Defendant admitted that he had caused the injuries to
17 the victim; and therefore, there is no issue as to that, that
18 aspect, the physical injury. So, the lesser included offense
19 would not apply. Of course, the elements of unlawful entry
20 with intent to crime still exists for burglary first as they
21 do burglary second, but the elements regarding physical injury
22 is no longer an issue because the Defendant admitted on the
23 witness stand.

24 THE COURT: All right, Mr. Goude, what's your
25 position on that?

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1 MR. GOUDE: We would request that in addition to
2 burglary, and this is answering that point, Judge, in addition
3 to burglary first we request that burglary in the second
4 degree be charged on the issue that whether or not it's a
5 dwelling would be a factual matter for the jury. The lady
6 said that -- my client said the beds had no linens and things
7 on them and he went in the bedroom and the prosecuting witness
8 said that she had stayed with her mamma and went there Friday
9 evening and was out until midnight or so of Saturday night and
10 came there and was sleeping on the couch, and whether or not
11 it's a dwelling or it's an unoccupied building that she just
12 happened to be sleeping in, we would say that would be a jury
13 Question and that would be a burglary in the second degree
14 charge on the ground of it not being a dwelling. On the
15 injury part we also ask that burglary in the second degree be
16 charged, that if the jury finds it is a dwelling, but finds no
17 physical injuries were caused in the immediate inside the
18 building, which she said there was no injuries done inside the
19 trailer or in the immediate flight there from, that they would
20 find him not guilty. We're also asking that the charge
21 of accidental injury be given on the grounds that the
22 Defendant said he accidentally fell down the back steps when
23 he was walking with the girl or he was not intending to
24 kidnap her or not intending to burglarize and if the bruises
25 accidentally occurred to the girl when they fell down or

1 either when she was laying in the back of the truck, we would
2 ask that that be charged on accident. So, if the jury finds
3 that there was no physical injury caused during the burglary
4 or immediately fleeing from the burglary, they would find him
5 not guilty of burglary in the first degree. We also ask that
6 burglary in the third degree be charged on the ground that if
7 the jury finds it was not a dwelling place and also there was
8 no physical injury then it would be a building in the daytime
9 that he had entered, which would be burglary in the third
10 degree. So, those requests for accident, burglary
11 in the second degree, burglary in the second degree and
12 burglary in the third degree be charged and also we would ask
13 that as a lesser included offense on burglary since the
14 burglary indictment says that the physical injuries was caused
15 we also ask that simply assault and battery be charged as a
16 lesser included offense on the ground of physical injury, if
17 some physical injury was caused by touching the girl when
18 they tripped and fell down the steps and he was not supposed
19 to touch her, that was against her will, then that would be a
20 simple assault and battery even if the jury figures that he
21 had no intent to commit a crime when he went in the trailer;
22 and therefore, is not guilty of burglary, if he touched her in
23 some manner and she didn't want him to touch her, that could
24 be a simple assault and battery. As a lesser included of
25 kidnapping, we ask that assault and battery of a high and

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1 aggravated nature be charged on the grounds that if he -- the
2 prosecution is saying he kidnapped her by taking her and
3 taking her out of her house and taping her, if the jury finds
4 that he was not intending to kidnap her but that he did tape
5 her and he is a male. So, he's got a different gender from
6 the prosecuting witness, who is the female, and a difference
7 in genders is one of the grounds that -- of an assault and
8 battery to be an aggravated. We would ask that aggravated,
9 assault battery of a high and aggravated nature be charged as
10 a lesser offense of the kidnapping, and if the jury finds that
11 he did not assault her in an aggravated manner but he did
12 touch her against her will, under the kidnapping charge, we
13 would ask that simple assault and battery be charged as a
14 lesser included offense of kidnapping that if he did touch her
15 and it was against her will but did not constitute kidnapping
16 it could be a simple assault and battery. So, we would ask
17 that those lessers and the accidental injury charge be given.

18 THE COURT: You want me to charge littering for
19 leaving the tape around, too?

20 MR. GOUDE: Sir?

21 THE COURT: You want me to charge littering for
22 leaving the tape around, too?

23 MR. GOUDE: No, sir.

24 THE COURT: All right, well, I'm going to charge
25 kidnapping. I'll charge burglary first degree, burglary

1 second degree. I deny the request on the other lesser
2 includeds. All right, let me -- I always hate to broach a
3 subject that nobody -- none of you have broached but
4 anticipating what will come up perhaps in argument, of course
5 the State can argue that flight, I won't charge flight, but
6 can argue flight as evidence of guilt. Based on the
7 grandmother's testimony, is it, Mr. Goude, are you going to
8 make an issue that your client was intoxicated at the time? I
9 haven't heard him say he was but she said -- I'm just
10 wondering if we need a voluntary intoxication charge. If
11 you're going to argue it to, if you're going to argue it to
12 the jury that he didn't know what he was doing because he was
13 doped up or drunk then I'll have to charge that.

14 MR. GOUDE: You can charge that. That'll be okay.
15 That'd be good with me.

16 MR. MODICA: I'm fine, Your Honor.

17 THE COURT: Sure.

18 THE COURT: All right, well, how long will each of you
19 take, the State?

20 MR. MODICA: Approximately a half hour.

21 THE COURT: Okay, Mr. Goude?

22 MR. GOUDE: Approximately one hour.

23 THE COURT: Now, you going to -- is the State going to
24 open or just ---

25 MR. MODICA: No, we'll close in full.

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1 THE COURT: Okay, the State is going to waive
2 opening.

3 All right.

4 MR. GOUDE: We have no objection to that.

5 THE COURT: All right, we'll -- let's break and stick
6 close. The pizza is supposed to be here soon according to my
7 note.

8 All right, we'll see you back as quick as we can.

9 ***** OFF THE RECORD *****

10 (On the record.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: The State ready?

14 MR. MODICA: Yes, sir.

15 THE COURT: The Defense ready?

16 MR. GOUDE: Yes, sir.

17 THE COURT: All right, the Defendant is present. All
18 right, bring in the jury.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right, counsel.

22 MR. GOUDE: I note as I saw you all walk out here
23 just a second ago I started laughing at myself a little. This
24 has to be the coolest place in the world to live. There's not
25 many countries on earth where the individual people are the

1 judges, you know. Most of the places like we still fighting
2 in Iraq trying -- because we're trying to get rid of a
3 dictator who owns everything, that owns everybody, that if you
4 don't like him he kills you. If he likes your wife, he kills
5 you, takes her. If he likes your house he kills you takes
6 her, takes the house. He likes your horse, kills you, takes
7 your horse. In many of the places in the world that's the way
8 the government is. It's just one gang after the other. It's
9 the gang that has the most guns or the most money or the most
10 power or the most men rules, and then if you the Sunni or the
11 Shiite and you've got the most men and the most guns then you
12 kill the others, give them no rights, don't let them
13 do anything, and you be the boss of the little -- just like
14 the bullies in the school house. You've got two or three
15 that's on the playground and they terrorize all the other
16 little boys and girls or you've got the little gangs in one
17 corner of Georgetown or Carvers Bay or Hemingway or South
18 Carolina or New York City or Los Angeles or you've got a
19 little gang in a little country the Chetznians where they will
20 murder the Muslims or the Muslims in Chetznia in Yugoslavia,
21 will murder the other little crew. Now, that's the way it is
22 most of the world.

23 We got such a good system because you just pick
24 individual people, whatever your jobs are and your business,
25 and you come in here and you will decide what happened. That

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1 is a great system.

2 The prosecuting witness says, "I'm in my little trailer
3 that I've been living with my mamma for the last week or so
4 since January the 17th when I left Charleston or Summerville,
5 stayed with my mamma last night, Friday night, I stayed in
6 this little trailer that's got no bed linens and stuff on the
7 bed and I'm sleeping on the couch. I take my kids and go to
8 some other person's house. We smoke cocaine or sniff cocaine
9 and I drink beer. I get in at midnight or one o'clock this
10 Saturday night, this January the 28th, early January the 29th,
11 Sunday morning and Mr. Parker has been calling some of my
12 friends that has cell phones. So, he calls one and that
13 one comes over and gives me his phone and says, "Call him and
14 tell him to quit calling me," and she calls my client and
15 tells him to quit calling her. She doesn't tell him where
16 she's at. Remember I asked her specifically, "Did you tell
17 him where you were at?" "No, I did not."

18 Where had she moved to when she left Summerville a week
19 and a half before, the 17th of January? She had moved in with
20 her mamma five miles down the road, not into this trailer.
21 She said the only time she stayed at this trailer was -- she
22 came over there Friday night with her kids, stayed there till
23 sometime noon time Saturday, then went to this other guy's
24 house, partied there, left her kids there, the same place
25 where she was smoking cocaine as far I understood her

1 testimony and drinking beer.

2 Came back to her little trailer at midnight or one
3 o'clock on cocaine and alcohol, laid down on her couch in her
4 clothes, didn't take her clothes off, put her pajamas on, put
5 her underwear on, leave, sleep in her underwear, whatever, and
6 at seven o'clock or eight o'clock my client and his grandmamma
7 gets there.

8 My client and the grandmamma who live in Summerville say,
9 my client says, "Yes, I had been calling her. I had been
10 trying to locate her. I wanted to talk with her. Heck, we'd
11 lived together for two years, boyfriend and girlfriend. She
12 had just moved out of the house a week or so before. I wanted
13 to know where she's at. I liked her. I loved her. I was in
14 love with her. I wanted to talk with her. So, I called all
15 these numbers trying to reach her, Saturday night, I couldn't
16 reach her, and then early Sunday morning, well, I called her
17 till around midnight, one or two o'clock and actually 1:42
18 p.m. is the last one Saturday night. Then I laid down for a
19 little while, " remember he said, "And then I get a phone
20 call from her and we talk and I wake my grandma up and grandma
21 said, "Well, she's supposed to come Tuesday to get her
22 clothes, but you're working that day. So, you will be here to
23 help her load her stuff or to see what's hers and what's not
24 hers, get her to come over here today, this morning, today."

25 Her truck or whatever is a little SUV, the Ford, white

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1 Ford Escape, SUV does not hold a bunch of stuff according to
2 the grandma, and in any event, Nicholas tells his grandma,
3 ``She said we come get her, bring her over here, let her go
4 through her stuff, pick it out and the stuff she doesn't want
5 you grandma, keep it, sell it at the yard sale or use or
6 whatever you want to do with it instead of us hauling it to
7 Georgetown and the girl throwing half of it away or us hauling
8 it back to Summerville. She can come here to Summerville, go
9 through what she wants out of the two truckloads that the
10 grandma and ma had hauled from the trailer that they had lived
11 in until October, let the girl come here, pick out what she
12 wants. We'll load it in the truck, take it to her house. The
13 rest of the stuff, grandma, you can have it, sell it at your
14 yard sale because you're a pack rat you say.''

15 The grandma said it was her idea, not Nicholas
16 Parker's to come to the trailer that morning, not Nicholas
17 Parker's idea to go kidnap his girlfriend from the trailer.
18 The grandma said it was her idea. She's charged with burglary
19 and kidnapping, too. It was her idea and her husband's,
20 instead of waiting for the girl to come there Tuesday when
21 Nicholas was working, but to come there Sunday when he's off,
22 he can help her load, and apparently from the conversation of
23 the grandma and the testimony she gave they were basically
24 sick of her. Not so much that she's bad and the grandson is
25 good or the grandson is bad and the girl is good, but the

1 grandparents and the mother, too, were getting sick of the
2 relationship, always fussing, fighting. I think Nicholas said
3 they had separated eight or nine times in the year and a half,
4 two years they lived together.

5 The grandma says they get the truck, drive to Georgetown,
6 get the girl, go back to Summerville, go, they go through her
7 stuff, the girl and Nicholas pick out what she wants, they
8 load it in the back of the truck and in garbage bags and boxes
9 in the back of the truck and then they bring her back to
10 Georgetown.

11 All right, now, is there any way to get any idea of what
12 is true? Johnny Cash sang, "And the lonely voice of youth
13 cries what is truth." Okay, well, let's see.

14 Let's use the prosecutor's evidence. The prosecutor's
15 evidence is the phone records. You've got phones records to
16 1:42 a.m., out, "O" means out. Out from, this is the phone
17 records of Mrs. Ward, Shirley Ward, the phone records show the
18 out calls. This is January the 29th, 035, Saturday night
19 12:30 a.m., early Sunday morning. Okay, the calls out, out,
20 out, out, 35, 36, 36, 36, 1:40 a.m., 1:41 a.m., 1:42 a.m.,
21 1:42, out and then it stops being out. As you will see from
22 the phone records the next call is 5:17. In, that's what the
23 "I" stands for, in, 2 minutes 54 seconds, 5:17 a.m., no
24 calls from 1:42 to 5:17, that's two to five would be three,
25 three hours and a half. Remember he said he called and

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1 eventually he laid down. At five or six o'clock he got a call
2 from the girl, which is the phone record there, a call from
3 her, but she said, "He was calling my friend Kevin Johnson.
4 So, Kevin Johnson came over to my trailer and gave me his
5 phone, right there in his hands, and said, "Call this guy and
6 tell him to quit calling me because he's bugging me.'" That's
7 right. That's right. The little suspicions begin to form.

8 1:42 a.m. is the last call out of his house. The call
9 that she made to him is 5:17 a.m. That's three and a half
10 hours later. All right, now, if Kevin Johnson is mad at
11 her, mad at my client calling him and brings the little phone
12 over to her house, her trailer, remember they were all at Joe
13 Hewitt's trailer she said, which was two minutes down the road
14 where she left her kids. Kevin Johnson gets -- keeps getting
15 cell phone calls from my client. He's mad that my client
16 calls him, runs the two minutes over to my -- to the girl's
17 trailer and says, "Nicholas Parker is calling me. I am sick
18 of him calling me. Call him right now. Tell him to quit
19 calling me." She said she called him right then and told
20 him, "Quit calling him, Kevin Johnson."

21 Why is the last call from Nicholas out of his house at
22 1:42 a.m. and the call from the girl to Nicholas, 5:17 a.m.,
23 three and a half hours later? Did it take Kevin Johnson three
24 and a half hours from a quarter to two in the morning on
25 Saturday night, Sunday morning, to 5:17 a.m., Sunday

1 Morning? Did it take him three and a half hours to think,
2 ``You know, I am tired of Nicholas Parker calling me.'' He
3 sitting there three hours thinking about that, three and a
4 half hours?

5 Now, if there was a call on there like at 5:12 a.m. out
6 of Nicholas Parker's house to the girl's -- to one of these
7 cells phone or the home phone or whatever, and the girl said,
8 ``Oh, yeah, he got a call. He was sick of him calling him.
9 He ran over here two minutes from Joe Hewitt's house where
10 they were all staying at my trailer," then what she said
11 would make sense, or if she said, ``Kevin Johnson lived in
12 Columbia. He lived three hours away from me and he got a --
13 three and a half hours on the other side of Columbia, and he
14 got a call," but he wasn't, he was at Joe Hewitt's house,
15 but let's just imagine that we trying to help the prosecution.
16 All right, let's just say that Kevin Johnson, the prosecution
17 witness said, ``Well, Kevin Johnson lives on the other side of
18 Columbia three and a half hours away from my little trailer
19 park here at BB Smith's, and he got a call at a quarter to two
20 that night from Nicholas Parker and he was sick of Nicholas
21 Parker calling his phone.'' So, he gets up at two o'clock
22 that morning or at least he was still up drinking beer and
23 smoking cocaine or snorting cocaine. Let's say he's gone to
24 sleep or not gone to sleep. Who cares. So, he jumps in his
25 truck on the other side of Columbia, drives the three and a

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1 half hours down here to BB Smith's trailer park. When he gets
2 up at two o'clock, he says, ``You know, when I get there to BB
3 Smith's trailer park it's going to be five o'clock in
4 the morning, Sunday morning, but I don't mind waking up a
5 person at five o'clock in the morning on a Sunday morning.
6 That's just a normal thing. We'll just get them up. I won't
7 wait until eight o'clock or nine o'clock when people normally
8 get up on Sunday. I won't call Joe Hewitt, who is our good
9 friend that lives two minutes from her trailer and save me a
10 three and a half hour drive. Let him go two minutes to her
11 trailer and say, `How about tell Nicholas Parker to quit
12 calling us on our cell phones.'" Does that make sense to you
13 that he would drive three and a half hours, no, and the
14 prosecution witness didn't say that. She said they were all
15 at Joe Hewitt's house.

16 Does it make sense and remember Kevin Johnson did not
17 testify. They did not call him. Does it make sense that if
18 somebody is getting a call at 1:42 that night, midnight,
19 Saturday night, if he is so disturbed or upset would he not
20 run to the girl's house right that second if he was
21 two minutes away and have her call right then, ``Hey, it is
22 1:42 a.m. I just got a call. Call Nicholas Parker now and
23 tell him not to call my phones anymore.'" Why didn't, why
24 didn't he do that at 1:42 a.m. when the last call was made?
25 Would that make sense or if he did keep getting calls at 1:42

1 a.m. and he wanted to call and he was just not wanting to wake
2 somebody up, why wouldn't he wait until eight o'clock, eight
3 or nine o'clock the next morning? Why would he go to the
4 house at a quarter after five, go to the girl's trailer at a
5 quarter after five?

6 And if somebody was telling you that they were really
7 disturbed about these calls wouldn't it be right then when the
8 call was made at 1:42 a.m.? Why would you wait until a
9 quarter after five to go there or would you go to the -- the
10 prosecution witness didn't say, "Well, Kevin come over here
11 at two o'clock in the morning and we sit there for three and a
12 half hours, three hours and 15 minutes talking." She said he
13 came right over, said, "This guy calling me on the phone,
14 bothering me. How about call him and tell him not to come."

15 The prosecution witness says, "He beat me a lot and I
16 always scared. He controlled me." I think there was a
17 little motion picture here at the beginning, obsession. I
18 know that's a perfume, a woman's perfume. I've seen that at
19 Wal-Mart. Compulsion, I think that's a man's perfume, object,
20 control. 22 year old didn't even graduate high school, lives
21 with his grandma, is that your typical person thinks is going
22 to control you?

23 The girl said, "I was his slave. I was his sex slave
24 for the two years, and I just couldn't get away. I lived in
25 Summerville where my daddy's family, my aunts, cousins,

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1 relatives all live where I went to school five or six miles
2 from the house I'm a prisoner in, a slave and I couldn't call
3 out. When I went to Food Lion I couldn't call the work phone
4 at Food Lion. When I worked at Shoney's I couldn't call with
5 the work phone at Shoney's. When I was at the grandma's house
6 they got the kitchen phone. I couldn't use that phone. When
7 I would drive to the Food Lion to work in the morning I
8 couldn't stop at any gas station, convenience store and use
9 the phone. When I would come home from Food Lion
10 and Shoney's in the evening, driving my Oldsmobile or
11 whatever, the Cavalier I think it was, I couldn't stop, make a
12 phone call. When Nicholas went to work at the auto body shop
13 or went to work with his uncle I couldn't use the cell phone
14 there. I couldn't walk down the road and call somebody. I
15 was just a slave. The eight or so times I separated from him
16 and left him I just had to go back to him either because I was
17 his slave or I felt sorry for him."

18 "When I moved out of the trailer park in Summer Creek in
19 Ladson near where I was born and raised and then came to
20 Georgetown County where my mamma was living I was just still
21 his slave. I was his living slave, like William Holden said
22 in the Bridge on the River Kwai, a living slave. I was his
23 living slave and I was also scared of him and I was sorry for
24 him. So, after he came down here and stayed with me for a
25 week and finally my ma and I got rid of him. He left because

1 we treated him bad. Ma tried to tell him what to do, but
2 then I was so scared of him for the week after he was gone
3 that I just couldn't resist being scared of him. I just love
4 being scared of him. So, then I packed up and drove back to
5 Summerville, another hour and a half so I could be close to
6 him so I could get scared some more because I like being
7 scared of him or I was just so controlled that I didn't even
8 know I was scared of him or I was so controlled that I knew I
9 was scared of him but his little attraction it's like a
10 magnet, his little attraction is just pulling me so hard that
11 I would have to leave my kids with my mamma, the ones I love
12 so much I could never be away from them. I'll just live here
13 with him since he uses cocaine so I can go over there with
14 him, live with him and his grandma in the bedroom with sheets
15 over the doors and then I will stay there."

16 The Judge will tell you since Nicholas Parker is the only
17 one that faces a verdict today, it is his intent that you all
18 will be voting on it will be whether -- not whether Nicholas
19 Parker is a genius or not. That will not be on the verdict.
20 Is Nicholas Parker a genius? That won't be one of the
21 questions. Is Nicholas Parker the smartest human being that
22 you have ever seen in your years? That will not be on the
23 verdict form either. The questions will be did Nicholas
24 Parker intend to commit a burglary, breaking into somebody's
25 dwelling house that morning? He has got a long set of

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1 charges, sort of like a shotgun. The two main ones he's
2 charged with and the Judge will tell you about some lesser
3 charges sort of like Tupperware bowls, if the big one doesn't
4 fit, maybe the little one, the little one under it will fit.
5 Burglary in the first degree, the Judge will tell you is
6 breaking into somebody's dwelling house that they live in, and
7 in this case it was in the daytime. Normally burglary in the
8 first degree is at night time, breaking into somebody's house.

9 MR. MODICA: Objection.

10 THE COURT: Yeah, I sustain the objection.

11 MR. GOUDE: Is this ---

12 THE COURT: Just, wait, wait, wait just a minute.

13 Don't be concerned about what something normally is. This
14 gentleman is charged with a certain offense and we need to
15 talk about that.

16 MR. GOUDE: In this case Mr. Parker is charged with
17 breaking into somebody's dwelling house in the daytime, but
18 because of the injuries to the person while there or while
19 fleeing, so, you've got two things. One did he have, and the
20 Judge will tell you that you have to look at his actions and
21 determine if he had the intent, Nicholas Parker had the intent
22 to burglarize the house when he opened the door and went in.
23 The Judge will say you have to have the intent to commit
24 burglary, to commit a crime in the house when you
25 open the door and go into the house. If you don't have that

1 intent at that time then it's not burglary.

2 Well, how you going to figure that? Remember his grandma

3 said on the stand it was her idea to go to the house. She

4 said they were supposed to come -- the girl was supposed to

5 come get her clothes on Tuesday and she and her husband

6 decided it was better to do that Sunday while Nicholas was off

7 so he could help load the stuff, so he could go with them if

8 they needed to so that he wouldn't be working Tuesday when the

9 girl came so that there was a question about what was hers or

10 not hers or also for him to help load the stuff if he would be

11 there Sunday, he wouldn't have to miss work Tuesday.

12 So, the grandma said it was her idea to go to the house, not

13 Nicholas Parker's idea, but he went with her to bring the girl

14 back and he said the girl said, "Come get me and I will go

15 there and we'll get the stuff and come back," and what I ask

16 you to consider is the phone records that we've already talked

17 about on the issue of who is telling the correct statement and

18 who is not telling the correct statement, and you say, "Well,

19 Reuben Goude, why are you so ignorant? Why would the

20 prosecution witness go through all this mess, waste time, a

21 week's work, well, if they do work, if anybody is

22 working. Some of us are working, waste a week's time, go to

23 the police, make the complaints, go through all this hassle of

24 having to meet with the prosecutors if this did not happen?

25 Why would anybody in their right mind do all this? Well, why

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1 would anybody in their right mind smoke cocaine or puff
2 cocaine or smoke marijuana if they know it's illegal. Lots of
3 people do lots of ignorant things. Well, what reason did the
4 prosecution witness have for doing this?

5 Well, Mr. Parker has told you and the mother has told you
6 and the Plaintiff, the prosecution witness told you that her
7 mother does not like Nicholas Parker for whatever reason,
8 whether it's because they used drugs together, whether he has
9 beat her, whatever reason the Plaintiff's mother, prosecution
10 witness's mother does not like Nicholas Parker, and she's got
11 these two little children who we all know DSS can take kids if
12 you're using cocaine or not taking care of your children, and
13 there's been evidence that both of them used cocaine in the
14 grandma's house in the trailer in Summer Creek and in the
15 trailer here at BB Smith's trailer park.

16 Let's say that the mother of the prosecution witness does
17 not like Nicholas Parker, puts pressure on the daughter not to
18 associate with Nick. Maybe she's right. Maybe the girl
19 should not associate with Nicholas Parker. Maybe the mamma is
20 doing what she thinks is the best. Maybe it is the best
21 interest that the girl not associate with Nicholas Parker.
22 Everybody said, "Don't associate with him anymore." Now, is
23 there any advantage to the prosecution witness doing what the
24 mamma says and leaving Nicholas Parker and not associate with
25 him, let me think if I can figure out any advantages. Would

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1 it be an advantage to have a trailer that's paid for. I know
2 when you eat lunch, I do myself and you sit in a nice
3 comfortable room, it's got lights in it or sun or good heat,
4 you're going to sleep. It's one of the best things in the
5 world to do.

6 Let's see if we can figure out any advantages to the girl
7 of pleasing the mamma and putting him in the penitentiary or
8 getting him convicted, whatever happens to him. Wonder if a
9 paid for trailer had a bearing on that in the BB Smith's
10 trailer parker, wonder if a paid for trailer park lot space
11 would have a bearing on that, wonder if being able to drive at
12 no cost a 2000, 2001 white Ford Escape SUV, could tempt
13 somebody. Wonder if having your utilities paid for you by
14 your mamma would tempt you? This is not the long history of
15 work. As I understood what the prosecutor said on his
16 questions that her -- the prosecution witness's contribution
17 to living while they stayed with Nicholas's grandma
18 for '04 to '05 and in '05 to '06, the contribution was giving
19 food stamps to the family to help to buy groceries for
20 everybody to eat the food stamps, as if she worked for those
21 food stamps. That's free from the government, from you all,
22 from me.

23 The prosecution witness lived basically free with
24 Nicholas Parker and his grandparents and mother in their
25 house, according to Nicholas, from around February of '04,

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1 according to the prosecution witness, from around October of
2 '04 through March of '05 free, no rent, no lights, no phone
3 bills. She gave food stamps that came to her from the
4 government free. That was her contribution to living.

5 March to October of '05 while they lived in the Summer
6 Creek mobile home park she worked a little bit at Food Lion.
7 I think she said the guy hit her and she quit because he hit
8 her. They had to leave there, went to BB Smith's trailer park
9 where her mamma had the paid for trailer, the mamma had paid
10 the lot rent on the trailer, the mamma had paid the utilities
11 on the trailer, the mamma gave her the car to drive. She
12 stayed there until December of '05, moved in back with
13 Nicholas Parker at his grandma's house where again there is no
14 rent, mortgage, lights, phone, maybe she was still getting
15 food stamps and she gave that into them, but for most of the
16 two years that they were together apparently she didn't
17 work and everything was provided for her and her mother was
18 doing that in Georgetown County at BB Smith's trailer park if
19 she would not be with him. Would that be an incentive since
20 we every day here in this courtroom as you all know you have
21 people charged with stealing \$10. So, people do stuff for \$10
22 of free stuff. What about free house, free car, free lights,
23 free phone, she could use her mamma's phone. Would that
24 entice somebody not to commit a crime just to stay away from
25 this guy and to say that instead of him coming there and

1 getting me and taking me to Summerville to get my stuff he
2 kidnapped me in doing that. Now, you say, "Well, what about
3 duct tape?" You say how many people in the course of their
4 lifetime have ever taped up a girlfriend's feet or hands with
5 duct tape to take them somewhere and my answer to that based
6 on common knowledge is not very many. So, you say well why
7 would Nicholas Parker, how could he be so stupid to do that if
8 it was not really a crime, if he was not really trying to
9 kidnap her and that is a good question.

10 You can't have too much brains to do that, not too many.
11 What he said was, "I went there to the trailer, saw
12 cocaine," which the person said that she snorted two lines,
13 expert opinion, two lines, knows what a line is, two lines of
14 cocaine at the party that evening and had beer, drank beer. I
15 think he said three or four beers and was asleep the next
16 morning on the couch. What did Mr. Parker say? "I went in
17 there and there was beer cans in the trailer." Now, he did
18 not say she drank 25 that night. He didn't say she drank 25
19 at five o'clock in the morning. He said he saw 20 or 25 beer
20 cans in the trailer, whether they got all put there Saturday
21 or Friday or Thursday he didn't say. He didn't know, but he
22 said he saw cocaine residue, white powder on the coffee table.
23 He knows because that's what they used for the two years they
24 were together, beer cans and a marijuana because that's what
25 they smoked for the two years they was together in the ash

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1 tray there at the coffee table. She's asleep on the couch,
2 five or six or seven, well, she called him at 5:15. They said
3 it was about an hour, hour and 15 minutes or an hour, hour and
4 30 minutes drive from Moncks Corner. So, the grandma said
5 and there's two calls out where he called her back according
6 to what the grandma said she told him to, he told her to call
7 back or something. Anyway, there's two calls out at 6:14.
8 So, let's say they left at 6:30. It takes an hour and a half
9 or a hour and 15 minutes to drive down here and that would be
10 7:45 they get to BB Smith's trailer park, five minutes to do
11 what they did here and leave, 10 minutes, hour and a half
12 back to Moncks Corner, get there at 10 minutes to nine, that
13 would be 20 minutes after nine that they would get back to
14 Moncks Corner, what time is the call out from Moncks Corner,
15 the grandma calling the Plaintiff's, prosecution witness's
16 mamma, 9:30. Walk back to the house, call the mamma.

17 Now, if you're kidnapping somebody, you're burglarizing
18 their house and you're kidnapping them, do you immediately
19 take them to your house? Where in the world do the police,
20 the Royal Canadian Mounted Police, the bloodhounds and the
21 girl's mamma think that this girl would be if she was with
22 Nicholas Parker? Where? At his house. So, where did they
23 take her? And the grandma, who's got no criminal record at
24 all, to the house. Now, if you were kidnapping somebody and
25 burglarizing their house what is the last thing in the world

1 you would do if you had even an iota of brain power? Probably
2 the last thing in the world that you would do is to contact
3 the prosecuting witness's mamma. So, what is the first thing
4 they did when they got back to the house in Summerville at
5 9:30, 9:30 out, [REDACTED], that's the girl's mamma's phone
6 number. So, what is the first thing they do when they get
7 back to Summerville? They call her mamma. ``She's over here
8 with us. You need to pick up the kids. She was supposed to
9 pick them up at 8:30. It's 9:30."'

10 Does the prosecution witness's mamma think anything is
11 wrong then? No, she didn't call the police.

12 MR. MODICA: Objection.

13 THE COURT: I sustain the objection. I don't think
14 there's anything in the record about that issue one way or the
15 other.

16 MR. GOUDE: No, there was nothing. Did any police
17 show up at 1108 Lilac Lane that Sunday morning? Nope. There
18 was no testimony any police showed up at Lilac Lane that
19 Sunday morning. Did the prosecution witness say she called
20 the police that Sunday morning? No.

21 Then not only we have kidnapped and burglarized the house
22 and called her mamma to tell her where she's at, to make sure
23 that we're going to get arrested we will call her a second
24 time at 10:42 a.m. as the grandma said, calls her again, talks
25 to the mamma and, ``Did you get the kids," said, ``I called

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1 you an hour ago to see if you picked up her kids. Did you get
2 the kids?" "Yeah, I got the kids." "Let me talk with
3 Belinda." "Okay, well, I'll go and get her." She goes in
4 there and she's in the bed asleep. Remember she said on the
5 CD that when the girl told her to pick up her -- call her
6 mamma and tell her to pick up her kids the grandma said,
7 "Well, you can call her." The girl said, "No, you just call
8 her." How afraid was the girl? Well, she was so
9 afraid that while she was there, she was so terrified of her
10 life and all she said, "Oh, gosh, I'm terrified of my life.
11 I'm very afraid, but let's load my knickknacks in the back of
12 the truck, stuff them in the back of the truck and in the back
13 and let's put some garbage bags on it. I am terrified. I'm
14 going to be killed. I'm scared, but let's put garbage bags on
15 so my little knickknacks don't get wet while we're driving
16 back to Georgetown."

17 Also, "I am frightened I'm going to be murdered, killed
18 and raped on top of it, but would you mind getting me that old
19 dress I got in the closet in yonder, grandma, because I don't
20 want to forget that, and I know I'm going back. I've had a
21 terrible ordeal all day today. It's been excruciating and
22 fearful. So, we'll stop here and get gas while --
23 Nicholas, while you're out there pumping the gas and
24 grandma is in paying for it and the keys are in the truck as
25 the grandma said, "I will sit here petrified. I will not

1 take the car keys, lock the doors, the two doors to the truck
2 and drive the truck off or lock the doors and blow the horn
3 until the convenience store guy or girl calls the deputies in
4 that area to come save me. No, I won't do none of that. What
5 I will do when I get home I will get them to help me unload
6 the stuff, my stuff from the truck that I loaded on my back
7 porch, I will get him to drive, them to drive me to BB Smith's
8 store right at the end of highway so I can call mamma and
9 tell her I'm here so she will come and unlock the door that
10 apparently she locked while I was gone to Summerville
11 today," and they did all that stuff for her.

12 The kidnapping charge, before I leave verdict, the Court
13 will tell you now for the burglary charge it has to be proved
14 by the prosecutor that this was a dwelling house. It has to
15 be a place that is usually lived in, usually slept in,
16 normally lived in. If it's not normally lived in it's not a
17 dwelling house. Remember the girl said she had been living
18 with her mamma, had just came to this little trailer that had
19 no bed linens on the beds as Mr. Parker said because he went
20 into the bedroom to see if his picture was on the night table
21 and it wasn't. She said she came over there Friday night the
22 first time since October and she had moved back to --
23 Or November, December the first of December when she had moved
24 back to Summerville. This is the first time she had been back
25 there that night, Friday night, the night before. She had

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1 been staying with her mamma and this night she had been to a
2 party, came in about 12 midnight and was sleeping on the
3 couch, no linens. So, if you find this is not a normal
4 dwelling house, not normally used for that, then it wouldn't
5 be burglary in the first degree. It would be a lesser charge
6 of burglary in the second degree, and it also has to
7 cause physical harm to the person in the house while burglary
8 is going on or immediately fleeing out of it.

9 Now, the girl said, "We did not fall." The grandma
10 said, "I didn't see any falls." The girl said she got
11 bruises, as I understood it, from laying in the back of the
12 truck on the metal parts that seats roll on and stuff.

13 MR. MODICA: Your Honor, there's been no testimony to
14 that.

15 THE COURT: Yeah, I ---

16 MR. GOUDE: I'm -- I'm saying that there is
17 metal parts behind the seats in ---

18 MR. MODICA: He's testifying.

19 THE COURT: Okay, well, wait just a minute. Just a
20 minute, just back up. I think he's objecting to your saying
21 that she said she was injured in the back of the car.

22 MR. MODICA: Exactly. There's been no testimony.

23 THE COURT: Okay.

24 Just members of the jury rely on what you heard as far as
25 the testimony. If an attorney misquotes and I'm not saying he

1 is, but they do it it's unintentional, I'm sure, and
2 inadvertent but you remember the testimony as given by the
3 witnesses. They are the ones, the testimony that you must
4 rely upon. Go ahead.

5 MR. GOUDE: As you will note the bruises on the girl
6 are on her elbows, like her knee and under her arm and her
7 side, and if you will look at those photographs on that CD of
8 the truck you will see the metal runners on the floorboard of
9 the truck, behind the front seat that the seats move back and
10 forth on and you will see that those would be right where her
11 bruises were. I don't remember her saying that the man beat
12 her while she was with him.

13 She did say that he pulled her pants down and stuck his
14 finger in her. He says he did not do that. There was no
15 medical -- of course, there wouldn't be any medical evidence.

16 DNA, well, remember there was some DNA experts. The girl
17 said he put a piece of duct tape over her mouth when she was
18 in the trailer but took it off because there it was in the
19 trailer two days later when the police came on Monday.
20 Obviously it wasn't in the truck. They didn't find it in the
21 truck. It wasn't in the garage apartment. It was still there
22 in the trailer. He said he didn't put any duct tape over her
23 mouth. Does it matter one way or the other? Probably not
24 but remember also the DNA expert said that you can get DNA off
25 of the roots of hair. Now, remember the prosecutor asked him,

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1 "Well, when you put that duct tape on you did he just jerk
2 that stuff off, snatch it off," trying to show that he did
3 everything he could do to hurt her. "Did he just snatch that
4 old duct tape off, pull that old duct tape?" "Yes, that's
5 what he did." Well, remember the DNA expert said you can --
6 if you've got a little tiny piece of flesh on the end of your
7 hair that'll give DNA. Well, what he put -- remember
8 he said he put duct tape on her feet to start with and he took
9 that piece off, left it in the trailer and put another piece
10 of duct tape on her feet. What if he had pulled that piece of
11 duct tape off of her feet and some of her little hairs on her
12 leg with little pieces of meat attached to the roots of the
13 hair came off on the duct tape and the police when they went
14 there the next day or so they checked that piece of duct tape,
15 take whatever tape on it and pull it off and that's the DNA
16 SLED found. Now, they said spit will cause DNA. If you
17 sweated it would cause DNA. She said the heaters were on
18 right there at the couch, blood could cause DNA, she had a
19 sore on her foot or leg or something or tape caused it to peel
20 off, she said she bruised easily. Hair falling out of your
21 head, cells, dried pieces of hair like dandruff falling out of
22 your hair, anywhere, that kind of stuff is DNA.

23 There was a piece of duct tape found in the garage
24 apartment. Remember the DNA said, "I don't know if that came
25 from the roll that was in the trailer or not. I can't tell.

1 It was made probably by the same company." Well, they all
2 lived in Summerville. The girl said, "That was not my duct
3 tape." Mr. Parker said, "That was not my duct tape."
4 Apparently it was one of them.

5 If they bought -- whoever bought the roll of duct tape
6 was in the coffee table in the trailer since they all are from
7 Summerville, is it hard to believe that they would have bought
8 it from the same store that they bought tape that taped up
9 boxes that was in the Summer Creek trailer that was in the
10 garage apartment or was brought there by the grandma that
11 taped up other boxes that she said had duct tape on them that
12 was in the storage building in their yard in their house. The
13 duct tape could have come from anywhere. It could have been
14 bought. It was found -- remember there was one little piece
15 found in the garage apartment on the floor, but the person
16 said, "I got -- I don't know if it came from that roll or
17 not. I just don't know."

18 Kidnapping, if I was the prosecutors I'd say, "Well,
19 let's say everything he did he meant to do for a good reason,
20 but if he made her do something for one second that she didn't
21 want to do, if he held her in the couch for one second in her
22 house or took her out to the truck and then he -- they formed
23 a good intent, she loved him after that, wanted to go, if he
24 had her for one second, and he thought he was kidnapping her
25 and she thought she was being kidnapped, then he's guilty of

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1 kidnapping." That's what I would say if I was a prosecutor.
2 They'd give it a little more brainpower than I can give it
3 because they're a lot smarter than I am. They've got a lot
4 more lawyers and better lawyers. I'm doing the best I can
5 representing the Defendant. What I would probably say is he
6 said and the grandma said, "I said let's go there to get
7 her," because he talked with her on the phone. She said,
8 "Okay, come get me. I'll go back with you." He says, "When
9 I got there she was on cocaine and alcohol and I was going to
10 take her with me to go get the stuff like we had already
11 planned."

12 The girl has already planned to go there Tuesday from her
13 own testimony, it was a question whether she planned to go
14 there that Sunday morning or not. He said he thought she was.
15 The grandma said she thought the girl was coming there for
16 that reason to get her stuff. She was passed out and he
17 was going to carry her. She weighs more than he did. She
18 said she weighed, I think, a hundred and -- I do not want to
19 misstate -- naturally it's the second page from the front
20 instead of the 80th page from the back. She said she weighed
21 150 pounds. Seem like he said he weighed about 130 some that
22 day. So, she's bigger than he is if he was going to carry
23 her. So, he did put tape on her legs and feet, he said, took
24 it off and put another piece on, left that other piece in the
25 trailer and the police later found that, found one that had

1 DNA on it and she had her comforter on her that you all see.
2 It was January. So, I reckon it was relatively cool; and so,
3 he takes her in the comforter, and he thinks -- he said he put
4 the stuff on her hands, too. Now, was that smart? No, it was
5 ignorant. Ignorant as you can get, but it's done. We can't
6 change what was done.

7 Carried her to the door, unlocked the door, took her to
8 the truck and the rest you know. So, the question is whether
9 he intended, whether he thought he was doing something wrong,
10 whether he thought he was ---

11 MR. MODICA: Objection, Your Honor.

12 THE COURT: I sustain the objection. That's -- I'll
13 charge you what the law is and you listen to me as to what the
14 law is with regard to mental state required for kidnapping and
15 I'll tell you that at the proper time.

16 MR. GOUDE: The -- whether he thought he was
17 intending to kidnap somebody he told you what he intended. He
18 intended to take her to get her stuff from the garage
19 apartment and also he said people had abused her before when
20 she would get drunk or passed out, which is not hard to
21 understand that might happen to women if they're on drugs or
22 alcohol, and that he was doing that because -- and it's not
23 hard to believe that the guy loved her. If he was a stranger,
24 none of this would have even happened. If they was a casual
25 acquaintance none of this would have ever happened. He did

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1 love her. They lived together. They slept together. They
2 had sex how many times in two years? That forms a strong
3 bond, stronger than any of us will have for the girl.

4 He was emotionally involved with her. The reason I'm
5 saying that is whether he was intending to try to help her,
6 because remember this had gone on, not duct tape, but many
7 times before his mother said that she had seen, the mother of
8 Nicholas Parker had seen the girl passed out on drugs and
9 alcohol before, the grandma, Nicholas said that. They lived
10 together for two years. It's not hard to understand it if you
11 go out with somebody and you drink alcohol and you get drunk
12 somebody can pass out, throw up, and you have to carry them
13 home, help them home, help them into the bed, help take their
14 clothes off, help them take a shower, put covers on them,
15 that's a normal occurrence for people intoxicated, they
16 intoxicated on drugs or alcohol. So, he did what he said he
17 thought he was doing that to take her because she was under
18 the influence of the alcohol and drugs and because he thought
19 somebody might go there to her trailer because the deputy said
20 the doors weren't all that secure and do something to her
21 because there were four other little trailers right there and
22 then the other little trailers, section of the trailer park
23 over, right over some trees, and remember when the person left
24 out of the mobile there was not screaming, none of the
25 neighbors. Those little trailers are on top of each other..

1 Basically I think one of the policeman tried to say, "Well,
2 that does not fairly show how the trailers were located."
3 So, I asked him, "Well, can you imagine any other way to take
4 a picture more fairly to show where the trailers are?" "No,
5 I can't do that." You can see they're right on top of each
6 other and a trailer does not have concrete or brick walls or
7 wooden walls. A trailer is thin. That's why they're so cold
8 in the wintertime, no screaming.

9 The grandma said, "We got to Moncks Corner. The girl
10 sat up. I was going to the police." The girl said, "No,
11 don't do that," as well as Nicholas.

12 He made a statement to the police and in most, mostly he
13 said pretty much the same thing he said on the stand. I think
14 when he talked to the police he told them he did not tape the
15 girl's hand. Here he said he did and the girl said he taped
16 her hand. He said he did not tape her mouth. I think she
17 said he taped her mouth in the trailer and then pulled the
18 tape off or either she pulled it off because her hands were
19 like this with the duct tape on it and left it there in the
20 trailer. He said he didn't tape her mouth.

21 The grandma she made a statement. Some of the things she
22 was -- my memory is not a hundred percent perfect. Hers
23 wasn't. She had said a few things to the deputy in March of
24 '06, but you notice they didn't offer to put her whole
25 statement in of what she told them, and basically, the only

Closing Argument by Defense

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1 thing was a few little things was had he beat her before, had
2 you seen the girl's face puffed out before, basically nothing
3 about the incident that was any different as I recall.

4 That's pretty much what I wanted to say to you. There
5 was lots of other little things and it's often the little
6 things is what makes up cases, but you've heard the main
7 things I wanted to say. You all have got 12 brains. I've
8 just got one. You all have heard this thing has been going on
9 basically most of the week. I won't be able to respond when
10 the prosecutor gets up and testifies. I guess that the law is
11 made -- they made it that way so the prosecution has got the
12 burden. In a way you would think it would be the Defendant
13 to go last because the Defendant is the one that's facing the
14 penalty and nobody else, but that's not the way our rules are.
15 So, I won't get to get up and respond to anything the
16 prosecutor mentions. So, I would ask you to think of the
17 things that I mentioned. Think of what the evidence actually
18 came off of the stand, not be emotional and not say, "Do we
19 like child abuse? Do we like sex abuse? Do we like physical
20 abuse? If we don't we've got to vote in a way." That's got
21 nothing to do with it. This is a case of two people that
22 lived together and they've had disagreements and now we
23 are where we are. I would ask you to vote not guilty of all
24 the charges. The Judge will talk with you about intent, that
25 you had to think you was going to burglarize the place when

Closing Argument by State

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1 you went into the house. If you didn't it's not burglary.
2 The Judge will tell you all that stuff. So, I just ask you to
3 listen to everything and vote not guilty on the charges.

4 MR. MODICA: Who's tired?

5 MR. GOUDE: I am.

6 MR. MODICA: Or should I put my hands down and say
7 who's not? I will try to be brief in my summation because you
8 all have been watching me, you know that you've been paying
9 attention. You know that this is important. On behalf of
10 everyone we thank you so much, but I've got to just say what,
11 what, what was that all about? What was that summation about?
12 What was his defense about? If you think about how much time
13 during the course of this trial the Defense spent on talking
14 about the important facts in this case as to what happened
15 during the burglary and the kidnapping, it's -- I can't even
16 say hours. It's probably minutes that he spent on it and in
17 his summation he kept talking about, you know, you can't prove
18 the kidnapping. Well, what did he say about the facts? I
19 don't know about you but I missed that, and I kind of missed
20 him saying, "Well, gee, my client admitted to it. My
21 client admitted that he taped her feet. My client admitted
22 that he taped her hands. My client admitted that he caused
23 her physical injury." He didn't mention any of that
24 interestingly.

25 I want to take a moment just to comment a little bit

Closing Argument by State

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1 about a couple of things that he said and I would say that his
2 defense has been, you know, it's funny he said shotgun. His
3 defense has been a shotgun. I'm going to spread stuff out,
4 way out all over the place and I'm going to try and deflect
5 the jury's focus on what's really going on in this case and he
6 started saying all this stuff about this, that and the
7 other thing, and what he is trying to get you to do, and I
8 beseech you not to fall prey to it, is he's trying to get your
9 eye off the ball. He's trying to get you to base your
10 decision on whim and speculation and that's not how people
11 should be treated, whether it's the Defendant or the victim,
12 shouldn't be treated that way.

13 Now, State's Exhibit, I think it's Number One is in
14 evidence, but I have a copy of this, and I'm just going to
15 flip through it and you can see the highlights of all the
16 important numbers that the victim told us were connected to
17 certain people, and you can see how many there are, and of
18 course, you're going to have that back with you, but I'm just
19 going to take a moment since he concentrated on January
20 29th and he says that the last phone calls came in at 1:42 and
21 they did, 1:42, outgoing call lasts 14 seconds, 14 seconds, an
22 outgoing call at 1:42:48, five seconds, then we have the call,
23 the victim indicated that she made that call at 5:17 and the
24 phone number is [REDACTED]. Now, that's important although he
25 didn't want to talk about that with you, and then there's

1 phone calls at 6:13 and 6:14, which are outgoing calls.
2 There's two things I'm going to say about that. One is that
3 it's -- both the phone numbers are [REDACTED], not the 527
4 number. So, it's a different number. The first one is 14
5 seconds and the second one is 4-39. We have no earthly
6 idea, although he wants you to guess on whim and speculation,
7 that that phone call came from the victim. That could have
8 been the Defendant talking to the other people that he had
9 been annoying.

10 Now they want to make a big deal about Kevin Johnson
11 coming at five o'clock in the morning, that it'd been hours
12 afterwards. Kevin Johnson didn't testify, but he wants you to
13 guess on whim and speculation that nobody would do that.
14 Well, maybe they would. We know in life that things are
15 strange, truly strange, stranger than science fiction is an
16 expression that is used sometimes, but somehow we've got a
17 whim and speculation. That's what he wants you to do.

18 He said that the victim was motivated by the free ride
19 that she was going to get from her mother. Well, two things
20 about that. It's a year later and, you know, you would think
21 -- if it's all a bunch of lies, well, give up the ghost, but
22 more importantly, he said, implied that she's sucking blood
23 from her mother, that she doesn't live there. She doesn't live
24 at BB Smith's where she supposedly was getting the free ride.
25 She lives elsewhere. You heard that. So, that, that whole

Closing Argument by State

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1 theory and whim and speculation goes out the window, nonsense.

2 He, he said a lot of things and if you go back there and
3 talk about some of his thoughts, random thoughts, I would
4 submit, in his summation I'm going to say what would Mr.
5 Modica say about that because the reason being is I don't, I
6 don't want to take up too much of your time.

7 You know, he downplayed the victim being terrified. I
8 don't know you people. I don't know what goes on in your
9 lives and I hope to God that none of you know or have been the
10 victim of criminal domestic violence, but there isn't a soul
11 in this state, in this country that doesn't know that it
12 exists and doesn't know that it's real. It's a real thing.
13 People in criminal domestic violence relationships love and
14 hate and fear the person that they allow themselves to be
15 subjected to, and if we were truly to believe that you could
16 just walk out the door that we wouldn't have criminal domestic
17 violence now; would we? Because the person would have enough
18 courage to walk out and not let it ever happen again. I know
19 there isn't a one of you that doesn't believe that it exists,
20 that people stay in those types of relationships. So, we
21 should, we should besmirch her because she is, in fact, a
22 criminal domestic violence victim. We shouldn't believe her
23 because she's a criminal domestic violence victim.

24 You know, and it's funny because this trial isn't about
25 -- she's not on trial. She was never on trial although her

1 credibility is certainly something that you should consider
2 and I wouldn't begin to suggest otherwise, but that's the man
3 on trial over there. That man and his family and a woman also
4 accused are the people who have everything, absolutely
5 everything in the world to lose and to gain by your verdict.
6 If that's not motivation, I don't know what is.

7 He intended to try and help her because she was some kind
8 of cocaine and she was drunk. Well, apparently they had some
9 kind of conversation for a couple of minutes, I think it was
10 2-49 in which apparently she was able to communicate with him
11 for that period of time, but somehow she needed him to come
12 rescue her from herself and her drug habit because she was all
13 coked up there despite the fact that there's been not one
14 indication from the testimony that you heard from Dustin
15 Morris who showed up at that crime scene about beer bottles
16 and beer cans, coke and marijuana. You didn't hear one word
17 about any of that, and the victim when she was on the witness
18 stand didn't deny the fact that she had done some cocaine the
19 night before, and you don't have to be a cocaine user or a
20 drug addict to know that cocaine doesn't last in your
21 system a long time, and by the way, it doesn't take -- you
22 don't have to be a drug user to know that it's a stimulant and
23 not a depressant. So, you know, and somehow even though she's
24 spoke to him on the phone and she is in the sanctity of her
25 own home she needs help and rescuing from the Defendant. That

Closing Argument by State

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1 is absolutely, positively ludicrous, but they want
2 you to believe that, and lastly, I'm not going to get into
3 everything that the Defendant, not lastly, totally, the last
4 thing in his summation is I'm not going to get into everything
5 that the Defendant said to the police, but I think it's clear
6 to you that he said on the witness stand there was a whole
7 bunch of lies that he told to Sergeant Glover that wasn't the
8 same and to suggest otherwise is just not right or fair to
9 you, the jury.

10 I'm going to talk a very little bit about the law. The
11 Judge is going to give you the charge on reasonable doubt.
12 He's going to tell you that a reasonable doubt is the kind of
13 doubt that would cause you to hesitate to act. Well, I'm
14 going to tell you to take that literally you shouldn't find
15 anybody guilty. If you take it absolutely positively
16 literally you shouldn't find anybody guilty because you need
17 to hesitate before you act. In fact, the Judge is going to
18 tell you you have to go back there to deliberate. So, that's
19 a hesitating to act because you've got to sit down and think
20 about it. I would submit that and I don't wish to appear
21 cocky, I really don't think there's much to think about in
22 this case.

23 Having said that, he's also going to tell you that
24 reasonable doubt is the kind of doubt that leaves you firmly
25 convinced as to the Defendant's guilty. There isn't a

1 prosecutor in this country or this state or this country or a
2 federal prosecutor that has to prove beyond all doubt, beyond
3 all reasonable doubt because, guess what, it can't be done.
4 Nobody can do that because we're not -- it's not -- you know,
5 we don't pop open somebody's brain and read the tape from
6 their brain and know exactly what happened. You can't go
7 to a videotape.

8 The burglary charge is unlawful entry into a dwelling and
9 the Judge is going to give you the definition. He tried to
10 knock you off the dwelling aspect, Mr. Goude did. Dwelling is
11 a place that is usually used for inhabiting, living, sleeping,
12 eating. Well, this was actually being used because she
13 literally was sleeping there. So, there's no issue as to
14 that.

15 Secondly, the thing that's -- because the judge is going
16 to give you burglary in the first degree and he's going to
17 give you burglary in the second degree, this is the difference
18 between the two. Ready? One is that it's a residence or is
19 not a residence. One is with physical injury and one is
20 without. That's the only difference and we don't have an
21 issue on either one of those because we know she
22 was sleeping in her house. We know that's a trailer regularly
23 used for sleeping, living, eating and we know without a doubt
24 that the Defendant caused physical injury because when I asked
25 him I said, "You caused this physical injury in the

Closing Argument by State

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1 photographs," and he said, "Yes, I did." I don't need great
2 physical injury. I don't need tremendous physical injury but
3 you all know that there was enough injury there to be physical
4 injury.

5 The phone records, you know, the Defense mocked me for
6 obsession. Is there one of you don't think that this guy
7 wasn't obsessive? He admitted from the witness stand that he
8 was obsessive. He tried to downplay it. 140 calls, 142 calls
9 within a very short period of time.

10 Sleeping with his photo, when he didn't see it, he walked
11 into her bedroom, looked for it and flipped out. That is
12 some scary stuff. That is scary. That is way scary. Can you
13 imagine that? Can you imagine the terror of that to have
14 somebody like that that you have to look over your shoulder
15 all the time for? Horrific, she said she was terrified. She
16 testified to that and the Defendant himself said, "I can only
17 imagine how you felt," in his letters. The letters, "Like I
18 told you before all this happened, it would take death or jail
19 to get me away from you." Wow, wow, can you imagine? Can
20 you imagine having that kind of obsessive person to watch out
21 for. That is horrific.

22 The beatings, when I asked him about the beatings and the
23 shorts, "Yeah, I did it, but she deserved it. She showed --
24 she showed her legs intentionally." If he couldn't have her,
25 no one else can, jail or death. Think about the horrible, you

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1 know, taping, being woken up in your own bed, messing
2 yourself, the indignity of that, having somebody jam their
3 finger up your vagina to test whether you've been sleeping
4 around. When you remember these things, you remember the
5 indignity, you remember the indignity, the indignity that that
6 man caused in that woman. It is horrific. It is intolerable.
7 It is outrageous.

8 One of the things he said that I think he left the tape
9 on for 30 to 45 minutes, then I asked him again, "I also
10 understand between 15 and 20," in terms of the control, you
11 know, not allowing her to drive, not allowing her to work and
12 then you know it came from the grandma's mouth, though she
13 denied it on the witness stand, you hear her as she told that,
14 "He controls all of us, he's controlling. He makes me
15 do this. He makes me do that," his own grandmother.

16 He was heated, angry and upset with her, didn't -- in his
17 own words, didn't give her a choice, not at first. Think of,
18 think of this, he had five weeks to think of what he would say
19 to Investigator Glover, and what he comes up is that ludicrous
20 -- he didn't say anything, by the way, about the cocaine,
21 remember he didn't say anything about the cocaine or the
22 marijuana or the beer cans. He made some -- this thing about
23 serial rapists, kidnapper, murderer. You all live here in
24 Georgetown. Do you remember hearing anything about that? I
25 don't remember hearing anything about that. Do you really

Closing Argument by State

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1 think that the Defense played fair in the defense?

2 How much time did he spend asking the victim about the
3 Incident and what happened and how much during the course of
4 the trial did he try to mess with her dignity and her life,
5 demean and belittle her? What relevance did any of that have
6 to this case?

7 Well, as a jury you possess the consciousness of our
8 society and it is up to you to determine the facts in the case
9 for the minister as well as the prostitute, for the rich and
10 famous as well as the poor, for the model citizen as well as
11 the drug user.

12 All the salient things, all the important things that the
13 victim said are corroborated by independent means, even when
14 arguably it hurts what she was saying because you know it does
15 seem kind of strange, I will admit that it seems strange that
16 they would, you know, go to Arby's and go here and go there.
17 That's because this dude is controlling the situation and she
18 is in fear and she told him, she told them she went to Arby's
19 and she told them what time, what did Investigator Dustin
20 Morris find in the vehicle but an Arby's receipt for that date
21 at 2:09, I think that was his testimony if I my memory serves
22 me correctly, 2:09, corroborating what she said. What else
23 corroborates it? What corroborates it is the tape in the
24 house, which wasn't hers, as opposed to what he might
25 say, tape from the mouth. Guess what, the DNA they took swabs

1 from the inside of her mouth and they took swabs of the tape,
2 remember? Investigator Morris said they took swabs of the
3 tape. You don't get hair DNA by swabbing the tape because as
4 you heard the DNA expert testify you needed the root hair and
5 as he put it the meat of the hair in order to get DNA. They
6 weren't testing roots of hairs. They were testing dead or
7 skin cells that came off, that corroborated.

8 Do you notice how Mr. Goude kind of left out when he
9 talked about the tape found at the little apartment but he
10 neglected to mention the duct tape that was found in the back
11 of the vehicle and we know, you saw it's an exact match. That
12 corroborates her. All the important aspects of what she says
13 is independently corroborated.

14 I think there's two, two or three other important things
15 that I would say to you. One is, don't be afraid of the
16 obvious. The evidence here is there. It's overwhelming. If
17 you keep your eye on the ball it's there. Secondly, don't
18 compromise, don't compromise on the burglary, don't compromise
19 on burglary versus burglary second. Don't do that because if
20 you do that the truth of the matter is if he did it, if he
21 truly did it he doesn't deserve it, and if he didn't do it he
22 doesn't need you to compromise.

23 You've heard enough nonsense. I would say obsession,
24 object and control. This victim has waited a year and two
25 days for this nightmare to be over. It is time to end that

Charge

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1 nightmare.

2 THE COURT: All right, members of the jury panel my
3 charge is not going to be that long but I am going to let you
4 -- we'll take a real short refresher break before I do that.
5 So, if you'll go with the bailiff to the jury room this will
6 be a short refresher break and, Mr. Foreman, if you'd just let
7 us know when you all are ready to come back.

8 All right, we'll be at ease for a few minutes.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 ***** OFF THE RECORD *****

12 (On the record.)

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: Take your seats.

16 Just tell them whenever the jury is ready. Just whenever
17 they say they're ready we're ready.

18 Yeah, just whenever they're ready. I just wanted to come
19 on in and be sitting here ready to go.

20 MR. MODICA: Thank you.

21 (Whereupon, the following takes place in the presence of
22 the jury.)

23 THE COURT: All right, members of the jury panel, I'm
24 going to ask you now to give me your attention as I'm going to
25 charge you the law that you are to apply to the facts as you

1 determine them to be in this case.

2 As you know, the two indictments that you'll have in the
3 jury room with you charge Mr. Nicholas Parker with the
4 offenses of burglary in the first degree and kidnapping. I
5 will define those terms for you later. They are both
6 statutory. That is, they are both offenses which our
7 legislature has enacted into the laws of this state.

8 The fact that Mr. Parker is on trial, the fact that he
9 has been arrested, the fact that he has been indicted is not
10 evidence. That set of circumstances that brings us here today
11 as far as the charging and the arrest and indictment is not
12 evidence. That's just simply the way our process works. The
13 indictment which you will have or the two indictments which
14 you will have with you in the jury room, Mr. Foreman, and
15 ladies and gentlemen of the jury, are simply the paperwork,
16 the formal document that charges Mr. Parker with these
17 offenses. They are not evidence. They are also the
18 paperwork by way of which this case is processed through our
19 court system and where ultimately the unanimous verdict of the
20 jury will be enrolled.

21 The fact that there are two indictments is of no moment.
22 Each indictment charges a separate and distinct offense and
23 you must decide each indictment as to Mr. Parker's guilt or
24 guilty, finding him guilty or not guilty as to each indictment
25 uninfluenced by your decision as to the other.

Charge

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1 Me. Parker may be convicted or acquitted on one or both
2 of the offenses, for both, one or both of the offenses
3 charged. You will be asked to write a separate verdict of
4 guilty or not guilty on each indictment.

5 Now, to these indictments Mr. Nicholas Parker has entered
6 pleas of not guilty. His pleas of not guilty place on the
7 State the burden of proving his guilt beyond a reasonable
8 doubt. Anyone charged with any offenses in our judicial
9 system is presumed to be innocent of the charges against them
10 and need not prove their innocence. This presumption of
11 innocence is a substantial right. It is not a mere legal
12 theory or mere legal phrase. It is a substantial right which
13 inures to the benefit of anyone charged with any offense in
14 our system.

15 The presumption of innocence attached to Mr. Parker at
16 the time of his arrest, has remained with him as the case has
17 been processed, remains with him through this trial. The
18 presumption of innocence in Mr. Parker's favor exists at this
19 moment and exists as you deliberate. The presumption of
20 innocence in his favor is removed if and when and only if and
21 when you find that the State has proven as to an indictment
22 his guilt beyond a reasonable doubt.

23 Now, the State is not required to prove his guilt beyond
24 all or beyond every doubt, but beyond a reasonable doubt.
25 Proof beyond a reasonable doubt is proof that leaves you

1 firmly convinced of an individual's guilt. There are very few
2 things in our world that we can know with absolute certainty
3 and the law in criminal cases does not require absolute
4 certainty. It does not require the State to overcome every
5 possible doubt. If based on your consideration of the
6 evidence you are firmly convinced that Mr. Parker is guilty of
7 one or both of the offenses then you must find him guilty. On
8 the other hand, if you think there is a real possibility that
9 he is not guilty on one or both of the charges, you must give
10 him the benefit of that reasonable doubt and find him not
11 guilty.

12 A reasonable doubt has also been described as the kind of
13 doubt that would cause a reasonable person to hesitate to act.
14 Reasonable doubt may arise from evidence in the case or from
15 lack of evidence in the case.

16 I told you earlier I am the sole judge of the law. You
17 must take, accept and apply the law as I charge it. This is
18 true even if you think I charge the law in error or even if
19 you think the law should be different. Your oath requires
20 that you take, accept and apply the law as I charge it.

21 You're not to infer from anything I say or do or anything
22 I have at any time in this trial said or done. I am not as a
23 trial judge allowed to formulate or express to a jury any
24 opinion on the facts. That is solely your job. It is solely
25 up to you to examine the evidence, to give to the evidence the

Charge

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1 effect, the value, the weight and the truth you believe it
2 should have. In doing this, you may believe one witness as
3 opposed to several, several witnesses as opposed to one. You
4 may believe all, part or none of a witness's testimony. Use
5 your common sense, your sense of logic, use your experiences
6 in life in analyzing evidence. As judges of the facts you of
7 necessity must judge the credibility, that is the
8 believability of the witnesses who have testified. In
9 assessing believability, credibility, use those things I've
10 already mentioned. Use those things that you use in your day-
11 to-day life to determine the truth of individuals. You can
12 also use certain evaluators, a witness's demeanor, how they
13 act, are they hesitant, straightforward, look at the witness's
14 testimony to see if it's consistent or inconsistent within
15 itself or as to statements made during the course of a trial
16 or at other times. You can look to see what bias or prejudice
17 a witness may have, that is whether a witness would wish to
18 help or hurt one side or the other, and you can consider the
19 opportunity a witness had to actually know those things to
20 which the witness testified. All of these things you
21 consider to determine the true facts, apply the law and you
22 will be in position to return a verdict that speaks the truth.

23 Now, we have had expert testimony in this trial and I
24 stopped during the middle of trial and told you that experts
25 are individuals who can testify beyond general, what we call a

1 fact witness, that is I've told you that generally witnesses
2 can only testify to something they've actually sensed
3 themselves. They can't render an opinion. However, where an
4 individual has certain experience, training, knowledge or
5 skill in a certain area that person can render an opinion.
6 Opinions are given to assist you. They're not binding on you.
7 We've had testimony from experts qualified as trace evidence
8 expert and a DNA expert. It is up to you to determine what if
9 any value to give those experts' testimony, and in making that
10 determination look at the qualifications that the witness had
11 to render that opinion and the reasons given for the opinion
12 they reached.

13 Now, in a case such as this there are generally two types
14 of evidence that are presented, direct and circumstantial
15 evidence. Direct evidence is the testimony of someone who has
16 actual knowledge of a fact such as an eyewitness. It is
17 evidence which immediately establishes the fact sought to be
18 proven.

19 Circumstantial evidence is proof of a chain of facts and
20 circumstances which indicate the existence of a fact. It is
21 evidence which immediately establishes collateral facts from
22 which the main fact sought to be proven is established.
23 Circumstantial evidence is based on inference and not on
24 personal knowledge or observation. Our law makes absolutely
25 no distinction between the weight or value to be given either

Charge

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1 direct or circumstantial evidence, nor is a greater degree of
2 certainty required of circumstantial evidence than of direct
3 evidence. You should weigh all of the evidence in his case.
4 After weighing all the evidence if you are convinced of the
5 guilt of Mr. Parker you would find him, if you were convinced
6 beyond a reasonable doubt, you would find him guilty and if
7 you're not so convinced you must find him not guilty.

8 Now, in this case there's been introduced a statement
9 alleged to have been made by Mr. Parker. I had at an earlier
10 time outside your presence have to determine whether or not
11 that statement was admissible. I determined it was. I
12 instruct you that, however, you make the ultimate decision as
13 to whether or not the Defendant made the statement and whether
14 or not he made it freely, voluntarily, knowingly and
15 intelligently waiving his constitutional rights. If he
16 made the statement you must determine whether it was given, as
17 I said, freely, voluntarily, of his own free will. That means
18 that it was not caused by pressure, promise, coercion, threat,
19 intimidation, hope of reward, hope of leniency. In
20 determining whether the statement was voluntarily given you
21 should consider the characteristics of Mr. Parker, the details
22 of the questioning. You may also consider the age of Mr.
23 Parker at the time, his education or lack of education, his
24 mental ability or mental capacity, his intellectual
25 functioning, his background and environment. You can consider

1 the place and length of detention. You can consider the
2 nature of the questioning and the advice or lack thereof that
3 the Defendant was given regarding his constitutional rights,
4 that is you can determine and must determine whether or not
5 before giving his statement he was given his rights, which
6 include his right to remain silent, that he was told that any
7 statement he made could be used against him in a court of law,
8 that he had a right to have a lawyer present and if he could
9 not afford one that he would be appointed a lawyer without any
10 cost and that he could stop making a statement at any time.
11 You must carefully consider all of the surrounding
12 circumstances before you give any weight to the alleged
13 statement.

14 The State has the burden of proving beyond a reasonable
15 doubt that the alleged statement was voluntarily given by Mr.
16 Parker. If it was you may give the statement such
17 consideration as you deem proper. You must decide and only
18 you as triers of fact in this case what weight if any should
19 be given the statement and it is up to you determine whether
20 to consider it at all as I have mentioned.

21 Now, Mr. Parker is charged with, I said, two statutory
22 offenses. The burglary offense has coupled with it by law and
23 this what we call a lesser included offense. He's charged
24 with burglary in the first degree. There's a lesser offense
25 and I'm going to charge you called burglary in the second

Charge

719

1 degree. I will tell you more about burglary in the second
2 degree. There is a difference between the two and you can
3 only consider the burglary in the second degree if you
4 determine that the State has not proven Mr. Parker guilty of
5 burglary in the first degree, but before you could find him
6 guilty of any offense, the State would have had to --
7 have to convince you that he is guilty of that offense to your
8 satisfaction beyond a reasonable doubt.

9 Our law as it applies to burglary in the first degree as
10 the indictment against Mr. Parker provides that a person is
11 guilty of burglary in the first degree if the person enters a
12 dwelling without consent and with intent to commit a crime in
13 the dwelling and causes physical harm to a person who is not a
14 participant in the crime.

15 The State must prove first that Mr. Parker entered a
16 dwelling without consent and they must prove that beyond a
17 reasonable doubt. A dwelling is any building in which a
18 person ordinarily sleeps. It is not necessary that a
19 structure be constantly inhabited every day or night of the
20 year for the structure to constitute a dwelling. The State
21 does not have to prove that force was used to gain entry.

22 Next, the State must prove beyond a reasonable doubt that
23 Mr. Parker intended to commit a crime, either a felony or a
24 misdemeanor at the time of the entry. The mere entry into a
25 dwelling without consent is not burglary. If the intent to

1 commit a crime is formed after the entry it is not burglary.
2 On the other hand if the Defendant intended to commit a crime
3 at the time of the entry it is burglary even if the intent was
4 abandoned after the entry. It does not matter whether or not
5 the intended crime was or was not completed.

6 Intent may be shown by acts and conduct of a Defendant
7 and other circumstances from which you may naturally and
8 reasonably infer intent.

9 Finally, as to burglary in the first degree the State
10 must prove beyond a reasonable doubt that when entering the
11 dwelling or when fleeing from the dwelling the Defendant
12 caused physical harm or injury to the victim and the State
13 must prove burglary in the first degree beyond a reasonable
14 doubt before you could convict Mr. Parker of that offense. If
15 you find the State has failed to prove that you can consider
16 whether or not the State has proven a lesser included burglary
17 in the second degree.

18 Our legislature has defined burglary in the second degree
19 as follows, Section 16-11-312 of our Code of Laws says a
20 person is guilty of burglary in the second degree if the
21 person enters a dwelling without consent and with intent to
22 commit a crime therein.

23 To prove second degree burglary the State first must
24 prove beyond a reasonable doubt that Mr. Parker entered a
25 dwelling without consent, and I have defined dwelling for you

Charge

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1 and told you that force need not be used to gain entry. As to
2 second degree burglary the State must prove beyond a
3 reasonable doubt that Mr. Parker intended to commit a crime,
4 either a felony or a misdemeanor at the time of the entry,
5 entry of the dwelling for it to be considered burglary. The
6 mere entry into a dwelling without consent is not burglary
7 second degree, just like in first degree, if the intent to
8 commit a crime is formed after the entry. On the other hand,
9 if a Defendant enters a -- intends to commit a crime at the
10 time they enter the dwelling it is burglary even if the intent
11 was abandoned after the entry. Like with first degree
12 burglary it does not matter that the intended crime was not
13 completed. Intent may be shown by acts and conducts of the
14 Defendant and other circumstances from which you may naturally
15 and reasonably infer intent. If you will notice the only real
16 difference in the two is that burglary in the first degree had
17 the extra element of causing physical injury to someone who is
18 not a participant in the burglary to be first degree.

19 As to the charge of burglary the State must prove
20 criminal intent. The mental state required to be proven by
21 the State for a particular crime might be purpose, intent,
22 knowledge, recklessness or criminal negligence. The mental
23 state for kidnapping is different. It is knowledge or knowing
24 and I will define that mental state when I define for you
25 kidnapping. As to burglary, criminal intent must proven by

1 the State beyond a reasonable doubt. Criminal intent is
2 always a matter that must be determined by you, the jury, from
3 the circumstances surrounding the situation. There is no way
4 to prove intent to a -- there's no way to prove intent to a
5 mathematical certainty. There's no way medical science
6 can dissect one's brain and determine what a person had in
7 mind at the time they act. So, the law says that criminal
8 intent may be inferred from the circumstances shown to have
9 existed. This is how you make a determination of whether or
10 not the element requiring intent was present. It is not
11 necessary to establish intent by direct and positive evidence
12 but intent may be established by inference in the same way as
13 any other fact taking into consideration by you the acts of
14 the Defendant and all the facts and circumstances of the case.
15 Criminal intent is a mental state, a conscious wrongdoing. It
16 is up to you to determine what Mr. Parker intended to do if
17 you determine that he entered the dwelling as I have outlined
18 it for you based on the circumstances shown to have existed.
19 Criminal intent can arise from action or a failure to act. It
20 may arise from negligence, recklessness or an indifference to
21 duty or an indifference to consequences that are considered by
22 the law to be the equivalent of criminal intent.

23 Second, Mr. Parker is charged with kidnapping. Another
24 Code Section, Section 16-3-910 provides in pertinent part that
25 whoever shall unlawfully seize, confine, kidnap, abduct or

Charge

723

1 carry away any other person without authority of law shall be
2 guilty of kidnapping. The State must prove therefore beyond a
3 reasonable doubt that Mr. Parker knowingly and unlawfully
4 seized, confined, kidnapped, abducted or carried away the
5 victim without authority of law. To do a thing unlawfully is
6 to do it willfully and against the law. To seize means to
7 take hold of suddenly or forcefully. Confines means to limit,
8 restrict or enclose within bounds, imprison or shut or keep
9 in. Kidnap means to remove a person against their will by
10 unlawful force. Abduct means to carry off secretly or by
11 force for an illegal purpose. Carry away means to remove.
12 The State does not have to prove the Defendant did all of
13 those things. Instead, if you find beyond a reasonable doubt
14 that the Defendant did any of those things that is if he
15 seized, confined, imprisoned, kidnapped, abducted or carried
16 away you would be in a position to find him guilty of
17 kidnapping, if he did any of those. He does not have to do
18 them all.

19 Something done without authority of law is something
20 which the law does not sanction, permit, allow, condone or
21 provide justification for. The kidnapping does not have to be
22 for any personal or monetary gain or for any illegal purpose
23 but may be for any reason whatsoever. A kidnapping commences
24 when one is wrongfully and unlawfully deprived of their
25 freedom and continues until his or her freedom is restored.

1 Now, I've told you the mental state of criminal intent,
2 burglary. There's a different mental state required to be
3 proven and in the hierarchy of mental states it is a lesser
4 mental state than criminal intent. The State must prove as to
5 kidnapping that the Defendant acted with knowledge, that is
6 that he was aware that the conduct in which he was engaged
7 was practically certain to effect or constitute kidnapping, as
8 I have defined it, whatever his desire was as to the result of
9 his conduct.

10 I charge you that voluntary intoxication is not a defense
11 to a crime. A person who voluntarily becomes intoxicated is
12 just as responsible for the acts they commit while they're
13 intoxicated as an individual who is not intoxicated.

14 Now, your verdict must be unanimous. All 12 jurors must
15 agree. Once you have reached a verdict, Mr. Foreman, knock on
16 the door, tell the bailiff, the bailiff will come and get us
17 and we will send for you as promptly as we can. Even though
18 it's Friday afternoon, quite frankly, I'm going to be doing
19 some other work, and I'll interrupt it for you all because you
20 all have been here for several days.

21 If you have any questions write them down and it's -- if
22 you need -- if there's nothing in there to write on or with
23 let me know and we'll get that for you. Write down whatever
24 question you have, knock on the door, give it to bailiff, the
25 bailiff will bring it to me. I will consult with counsel.

Charge

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1 Once I have done that I will be able to respond to your
2 inquiry. It may be that I can write an answer to your note on
3 the note itself. It may be that I'll have to bring you back
4 in here and tell you the answer to your question. We can have
5 testimony replayed or read for you if you wish to have
6 testimony gone back over. If you do, please try to be as
7 specific as you can to what you want to hear so that we can --
8 it takes us a while to isolate because there's been quite a
9 bit of it.

10 Your verdict cannot be based on passion, prejudice,
11 public opinion, sympathy or matters outside the record. If
12 you want me to go over any part or all of the law let me know
13 that. In South Carolina we do not, as in some states, send in
14 a written charge of law. If you wish me to go over any part
15 or all of the law let me know I'll bring you back out in here
16 in open court. I will charge you the law as to whatever part
17 or in whole that you wish.

18 Now, when you first go into the jury room do not start
19 deliberating yet because I have to go over with the attorneys
20 my charge. If I have made an error, I've already told you you
21 have to follow the law as I charge it. So, I have to make
22 sure I've not made an error. If I have I will bring you back
23 in and correct it. If I have not, the bailiff will bring into
24 you the exhibits and you're free to go through all the
25 exhibits. They're there for your consideration. So, feel

1 comfortable with handling and looking at and reading whatever
2 you need to do with any exhibits, but when the bailiff brings
3 those in, he or she will also bring these indictments. Now,
4 Mr. Foreman, as to the kidnapping indictment again the verdict
5 must be unanimous. On the back you will see the word verdict
6 and there are three lines. There is a line for you to sign
7 at the very bottom and a place for you to date. Today is
8 February the 2nd. On one of the other two lines, this is on
9 the kidnapping indictment you will write the jury's verdict.
10 If the State has failed to prove to your satisfaction Mr.
11 Parker's guilt beyond a reasonable doubt, your verdict would
12 be two words, not guilty. If on the other hand the State has
13 proven beyond a reasonable doubt to your satisfaction Mr.
14 Parker to be guilty of kidnapping then you would write the one
15 word guilty.

16 It's a little different on the burglary because I told
17 you there was a lesser included offense. So, on that I have a
18 separate verdict form. It has three possible verdicts on it.
19 The order in which they are listed is of no importance. I
20 have to list them in some order. I always do it this way.
21 So, you're not to consider one as having any more importance
22 than they other. They're all three, whichever verdict you
23 determine is up to you. The first says we find the Defendant,
24 Nicholas Parker, guilty of burglary in the first degree as
25 charged. If you find that the State has proven that

Charge

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1 beyond a reasonable doubt that is you'd simply put a checkmark
2 in front of there, that line.

3 The second says we find the Defendant, Nicholas Parker,
4 guilty of the lesser included offense of burglary in the
5 second degree, and you would use that if you find that the
6 State has proven that offense but not proven burglary in the
7 first degree. The third says we find the Defendant not
8 guilty. Of course you would use that if the State has failed
9 to prove Mr. Parker guilty of burglary in the first or second
10 degree beyond a reasonable doubt There is, of course, a place
11 for you to sign and date that also.

12 Now, I'm going to let you go to the jury room but don't
13 start deliberating until you hear from me. That should be
14 momentarily. Don't get too comfortable and don't start
15 deliberating until you hear from me.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Any exceptions by the State?

19 MR. MODICA: Yes, Your Honor, in regard to burglary
20 first you neglected to read the portion that indicates when in
21 effecting entry or while in the dwelling or immediate flight
22 there from he or another participant in the crime and then
23 causes physical injury to a person not a participant.

24 THE COURT: I thought I did cover it.

25 MR. MODICA: I don't believe you did, sir.

1 THE COURT: Wait just a second. See if there's
2 anything else. That all?

3 MR. MODICA: That's all. Thank you.

4 THE COURT: Mr. Goude, you have anything?

5 MR. GOUDE: I thought you read the physical injury
6 part.

7 MR. MODICA: Yes, you did read the physical injury,
8 but you forgot the before, during or after or immediate flight
9 there from. You forgot that.

10 THE COURT: No, I -- well, we'll double-check and
11 we'll hear from Mr. Goude but with looking at my notes I read
12 the statute that does not have that language, quite frankly.

13 MR. MODICA: Yes, it does, Your Honor.

14 THE COURT: Well, let me tell you what I ---

15 MR. MODICA: It's A-1 and then of course, B.

16 THE COURT: All right, you're right. I skipped down
17 and read B, but then in my charge I did charge -- I did
18 not read that as part of the statute you are right, but I did
19 charge ---

20 MR. MODICA: It has it in your charge, Judge, but you
21 didn't read from your charge. You read it from the statute.

22 THE COURT: We'll check on that. I thought I did,
23 but go ahead, anything else, Mr. Goude?

24 MR. GOUDE: I would renew my request for charges that
25 I had made earlier, Your Honor, which is that burglary second

Charge

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1 be a lesser included -- strike that. The Court has done that.
2 I would request that burglary third be a lesser included in
3 case the jury did not find either a dwelling or physical
4 injury and I requested a simple assault and battery as a
5 lesser included to burglary and assault and battery of a high
6 and aggravated nature as a lesser included to kidnapping,
7 simply assault and battery as a lesser included to kidnapping,
8 and accidental injury charge. I had requested those and I
9 would renew that request at this time.

10 THE COURT: That's denied.

11 MR. GOUDE: And on the form of the verdict, Your
12 Honor, I would request that the back page of the indictments
13 not go into the jury on either count. I have no objection to
14 the front, the face of the indictment going in but the back
15 page, the reason for my request is the back page has action of
16 Grand Jury, true billed and it's got a signature here of the
17 foreman of the Grand Jury. So, I don't know how ---

18 THE COURT: I'll ask the State to redact that and the
19 indictments can go in, just redact the Grand Jury finding ---

20 MR. MODICA: On the ---

21 THE COURT: --- on the indictments. Just, just ---

22 MR. MODICA: So I make it ---

23 THE COURT: --- we'll send in a ---

24 MR. MODICA: On the original or on a copy?

25 THE COURT: No, on a copy, not on the original, no,

Charge

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1 we'll send in a copy and we can get it put on the original.

2 I did charge -- I did not charge it as part of the
3 statute, you're correct, but I did charge the State must prove
4 beyond a reasonable doubt that when entering, while in the
5 dwelling or when fleeing the Defendant caused physical injury
6 to the victim. We'll double-check.

7 ***** OFF THE RECORD *****

8 (On the record.)

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 MR. MODICA: That's fine.

12 THE COURT: Okay.

13 MR. MODICA: I would just ask that if they do come
14 back and ask for the definition again that you read it within
15 the statute.

16 THE COURT: All right, I'll do that.

17 MR. MODICA: Thank you, sir.

18 THE COURT: Okay, and if we can just -- we'll send in
19 copies just redact the true bill part. You can just put a
20 piece of paper over that and run a copy and then make sure we
21 get the verdict form and we'll take just a short break while
22 we take care of all the evidence and all. The court reporter
23 is going to be busy with that.

24 (Exhibits reviewed and approved by counsel for the State
25 and counsel for the Defendant.)

State v. Parker

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1 (Deliberations begin at 3:50 p.m.)
2 ***** OFF THE RECORD *****
3 (On the record.)
4 (Verdict reached at 4:25 p.m.)
5 (Whereupon, the following takes place outside the
6 presence of the jury.)
7 THE COURT: All right, let's get Mr. Parker in.
8 All right, Mr. Ehalt, let's come to order. We neglected
9 to ask you to stay in here when the jury was dismissed. You
10 went in and were brought back out I understand by one of the
11 bailiffs. Can you stand up and answer with words? You went
12 in with the rest of the jury but were brought back out by a
13 bailiff?
14 MR. EHALT: Yes.
15 THE COURT: How long were you in there?
16 MR. EHALT: Five minutes.
17 THE COURT: Did you participate in any discussion?
18 MR. EHALT: No, sir.
19 THE COURT: Okay, any questions by ---
20 MR. MODICA: No, sir.
21 THE COURT: Any by Mr. Goude?
22 MR. GOUDE: No, Your Honor.
23 THE COURT: Okay, so, you didn't participate or
24 you're telling me you did not participate in any discussions
25 with the jury.

1 MR. EHALT: No, sir.

2 THE COURT: Okay, and you were only in there about
3 five minutes after you went in there.

4 MR. EHALT: Yes, sir.

5 THE COURT: Okay, thank you. I'm going to let you
6 have a seat out there then.

7 All right, you can just have a seat out there.

8 All right, anything before the jury comes in?

9 MR. GOUDE: No, sir.

10 MR. MODICA: No, sir.

11 THE COURT: All right, well, I find that even though
12 the alternate went in that he did not participate and that he
13 was removed after a few minutes and did not participate in
14 The deliberations according to his comments, and of course, he
15 is under oath since he was put under oath as a juror.

16 All right, bring in the jury.

17 (Whereupon, the following takes place in the presence of
18 the jury.)

19 THE COURT: All right, Mr. Foreman, I understand
20 you've reached a verdict?

21 FOREPERSON: Yes, Your Honor.

22 THE COURT: Before you hand it up to me, through my
23 inadvertence the alternate went into the jury room with the
24 jury but he was brought out shortly after you went in I
25 understand and indicated to me he did not participate in the

Verdict

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1 deliberations; is that correct, Mr. Ehalt?

2 FOREPERSON: He may have said a few words particularly
3 when we were discussing the second charge. I'm not sure that
4 he participated at all in the first charge that we deliberated
5 on.

6 THE COURT: All right, what was the first charge?

7 FOREPERSON: We deliberated on the kidnapping is the
8 first charge.

9 THE COURT: Okay, all right, hand up your verdict
10 sheet.

11 (Court reviews.)

12 THE COURT: I don't see anything marked on the
13 burglary. Publish the verdicts.

14 THE CLERK: Indictment number 2006-GS-22-268, in the
15 case of State versus Nicholas Parker we find the Defendant
16 Nicholas Parker ---

17 THE COURT: You want me to do them?

18 THE CLERK: --- and this is in the charge of burglary
19 first, we find the Defendant, not guilty.

20 Indictment number 2006-GS-22-269, in the case of State
21 versus Nicholas Parker in the charge of kidnapping we find the
22 Defendant guilty.

23 THE COURT: This be your verdict so say you all by
24 raising your right hands?

25 (All jurors raise right hand.)

1 THE COURT: All 12 jurors do. Anything from the
2 State before the jury is dismissed?

3 MR. MODICA: Yes, Your Honor, I'm not sure if they
4 considered burglary second.

5 THE COURT: They found him not guilty. Come up and
6 look at the verdict form.

7 MR. MODICA: If you have reviewed it, thank you, Your
8 Honor.

9 THE COURT: Yeah, they found him not guilty of both.

10 MR. MODICA: Yes, sir.

11 THE COURT: He was just, he was just telling you
12 which indictment it was. They found him not guilty of
13 burglary first or second.

14 MR. MODICA: Thank you.

15 THE COURT: All right, Mr. Goude, anything before the
16 jury is dismissed?

17 MR. GOUDE: No, Your Honor.

18 THE COURT: All right, I'm going to allow you to
19 leave. We certainly appreciate your help this week. Thank
20 you so very much and you only have to serve now once every
21 three calendar years. So, this will take care of your time
22 for a while. Thank you very much. I'm going to ask
23 everybody to remain seated while the jury is dismissed.

24 (Whereupon, the following takes place outside the
25 presence of the jury.)

Motions

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1 THE COURT: All right, anything from the Defense now
2 that the jury has been dismissed?

3 MR. GOUDE: Judge, we would make a motion for a new
4 trial on the kidnapping charge on the grounds, first, of the
5 insufficiency of the evidence and, secondly, on the denial of
6 the Court to charge the lesser include offense of assault and
7 battery of a high and aggravated nature on kidnapping, and new
8 trial on the grounds of the Court's failure to charge the
9 lesser included offense of simple assault and battery, the
10 jury charge that we had requested, and the Court's failure to
11 charge the accidental injury jury charge we had requested.

12 THE COURT: All right, and motion for a new trial or
13 Motion, probably more technically be a motion in arrest of
14 judgment is denied, however it's couched.

15 All right, let's bring the Defendant around.

16 The State have any other presentation? Tell me his
17 record again.

18 MR. MODICA: Yes, Your Honor, in 1999 he has a
19 conviction for hit and run. In 1999 he has a conviction for
20 assault and battery of a high and aggravated nature, and in
21 2001 he has a conviction for use of a motor vehicle without
22 permission.

23 Your Honor, I think throughout the trial you have found
24 out a little bit of what the Defendant is all about, and quite
25 frankly, it's horrible and ugly, and because of that he should

1 be sentenced accordingly. The victim, I have stayed in touch
2 with the victim, as has Investigator Dustin Morris, during the
3 course of these events and I know that it was extremely
4 traumatic upon her as it would have been anybody. Whether or
5 not drug use was involved at some point in time really isn't
6 relevant to the horrible things that he did to her. I would
7 also ask you to make a finding on the record in regard to the
8 kidnapping that he be required to register as a sexual
9 offender, given the fact that during the course of these
10 events there was, in fact, sexual battery and, in addition,
11 because it involved, the kidnapping involved not a stranger
12 but someone he had, in fact, a, quite frankly, a sexual
13 relationship with and so that, the idea behind the sexual
14 registry is that people be forewarned about the potential of
15 this individual, and I think that's important and I would ask
16 the Court to make that kind of a finding.

17 I would submit, although I respect the decision of the
18 jury, I submit that to some degree the Defendant dodged a
19 bullet in terms of them finding him not guilty of the
20 burglary. I thought there was sufficient evidence there and I
21 would ask you to sentence the Defendant to, to a significant
22 length of sentence as you deem appropriate.

23 THE COURT: Does the victim want to say anything?

24 MR. MODICA: No, Your Honor.

25 THE COURT: All right, Mr. Goude.

Sentencing

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1 MR. GOUDE: Thank you, Judge.

2 I was counting up his days he's been in jail, Judge,
3 since March the 10th. Looks like to me it's two, three, four,
4 five, six, seven, eight -- I calculate it as 330 days since
5 March the 10th, 2006. We would ask you to give Mr. Parker
6 credit for that time. You've heard the facts and everything,
7 Judge. He's worked -- about his work history and all this.
8 We would -- of course, we all know that the kidnapping charge
9 is one of these no parole, 85 percent charges. So, whatever
10 sentence the Court gives from zero to 30 years, Mr. Parker is
11 going to have to serve basically all of it.

12 We would ask you to take into consideration that there's
13 been no prior charges filed by the prosecution witness against
14 Mr. Parker in this case and not trying to belittle it. Nobody
15 has a right to touch anybody else. Of course, nobody has a
16 right to use cocaine either. Nobody has a right to get
17 illegally drunk and drive a vehicle. So, there's lots of
18 things that people do that they're not supposed to, that they
19 end up getting into trouble. You've heard the relationship
20 between the people. My client's family was wanting them to
21 end it because they was giving them so much headache.
22 The prosecution witness's family was wanting them to end it
23 because they was giving them so much headache, and Mr. Parker
24 regrets what has happened. He has written letters to the
25 prosecuting witness saying he regretted what happened and he

1 has been guilty, found guilty of this charge, which carries
2 from zero to 30 years. He served going on a year in jail now.
3 I would just state, not to make light of anything, but to give
4 a balanced view, if it was me I had rather have my hands
5 and feet duct taped and driven to Summerville and somebody
6 help me load my own stuff ---

7 THE COURT: Well, to start off before you get too
8 deep into this, it ain't you.

9 MR. GOUDE: I know it ain't me but I'm representing
10 Mr. Parker and my point is that Mr. Parker, I would ask you to
11 give him a sentence that is reasonable based on whatever
12 suffering the other person had. That's what I ask you to do.

13 THE COURT: Well, in the hierarchy of crimes you have
14 murder, maybe voluntary manslaughter, criminal sexual conduct
15 and then kidnapping. I mean, there's nothing more egregious
16 than binding someone and restraining their freedom. I mean,
17 we're -- this is just conduct that's not acceptable in a
18 civilized society, I mean, and as much as you all tried to
19 paint her with a tar brush and you kind of did. She's not
20 going to be -- she's got some problems of her own but you
21 don't cure them by binding them, hog-tying them and doing,
22 having your way, it's your way or no way. All right, anybody
23 else want to say anything on behalf of Mr. Parker? You want
24 to say anything?

25 MR. PARKER: Yes, sir. I'm sorry for the crime that

Sentencing

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1 I committed. I wasn't realize -- at the time I didn't realize
2 what I was doing, but I realize later and understanding I'm
3 wrong, and just, I just ask the Court to have leniency on me.

4 THE COURT: Well, I don't feel like he's shown any
5 remorse. He lied. He ran. He's done everything. He's got a
6 bad record. By his own witness's testimony he beat her pretty
7 severely throughout their relationship, but that cowboy
8 mentality just doesn't cut it anymore. The sentence is 25
9 years. Give you credit for 330 days you served, and you have
10 to apply on the sexual offender registry. Thank you.

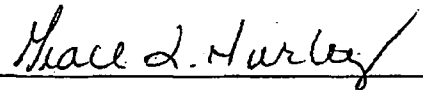
11 (Adjourned.)
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Certificate

C E R T I F I C A T E

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2
3
4 I, the undersigned, Grace L. Hurley, Official Court
5 Reporter for the State of South Carolina, do hereby certify
6 that the foregoing is a true, accurate and complete
7 Transcript of Record of the hearing held in the case of
8 State v. Nicholas Lee Parker, held in the Court of General
9 Sessions for Georgetown County, Georgetown County
10 Courthouse, Georgetown, South Carolina, on January 29, 2007
11 through February 2, 2007.

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

14
15
16
17 

18 Grace L. Hurley, CVR-CM

19 Official Reporter
20
21
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23 April 25, 2007.
24
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FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Nicholas L. Parker, 320005,
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2010 CP2200190

APPLICATION FOR

POST-CONVICTION RELIEF

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 Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Georgetown County Court of General Sessions, 129 Screven Street, Georgetown, SC 29442
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-22-269: Kidnapping
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence: _____

FILED
 GEORGETOWN COUNTY, S.C.
 2010 FEB -1 PM 3:14
 ALMA Y. WHITE
 CLERK OF COURT

Revised 3/2003

- (a) February 2, 2007: 25 years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 8, 2009
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No.: 2009-UP-134
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Unpublished Op. No.: 2009-UP-457
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistance of Counsel.

(b) _____

(c) _____

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

(a) Failure to conduct and independent investigation and prepare for trial.

(b) Failure to speak to or utilize defense witnesses.

(c) Failure to object or investigate coaching of victim / state witness.

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. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

- iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No.
- 15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) Post Conviction Relief is appropriate forum for relief
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? _____

- (b) your trial, if any? Yes.
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. C. Reuben Goude, PO Box 706, Georgetown, SC 29442
 - ii. Kathrine H. Hudgins, PO Box 11589, Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial.
 - ii. Direct Appeal.
 - iii. _____

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

A new trial.

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

No.

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

2010 CP2200190

I, Nicholas L. Parker, 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.

Nicholas Parker

SWORN to and subscribed before me this 7th
day of January, 2010.

Susan J. Johnson (L.S.)
Notary Public

My Commission Expires

March 5, 2018

My Commission Expires: _____

FILED
GEORGETOWN COUNTY, S.C.
2010 FEB - 1 PM 3:14
ALMA Y. WHITE
CLERK OF COURT

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

I, Nicholas L. Parker, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Nicholas Parker
Applicant

SWORN or affirmed to and subscribed before me this
14th day of January, 2010.

Susan D. Johnson
Notary Public

My Commission Expires: March 5, 2018

FILED
GEORGE LOWE COUNTY, S.C.
2010 FEB - 1 PM 3:14
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-190

Nicholas L. Parker, # 320005,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN
(Attorney Appointment Requested)

The Respondent, making its Return to the Application for post-conviction relief filed February 1, 2010, by Nicholas L. Parker, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to an order of commitment from Georgetown County. The Applicant was indicted in March 2006 for burglary in the first degree (2006-GS-22-268) and kidnapping (2006-GS-22-269). C. Reuben Goude, Esquire, represented the Applicant. On January 29 – February 2, 2007, the Applicant was tried, and the jury found him guilty of kidnapping, but not guilty of burglary. The Honorable John C. Hayes, III, sentenced the Applicant to twenty-five (25) years for kidnapping. A Notice of Appeal was timely filed, and an Anders Brief was submitted on the Applicant's behalf by Katherine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed the convictions on October 8, 2009 (2009-UP-457), and the case was remitted to the circuit court on October 26, 2009.

Incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the conviction, the Applicant's SCDC records, the trial transcript, and the appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. – Allegations and Relief Sought

In his Application, Mr. Parker alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel:
 - a. Failure to conduct independent investigation and prepare for trial;
 - b. Failure to speak to or utilize defense witnesses; and
 - c. Failure to object or investigate coaching of the victim/State witnesses.

The Applicant states he is seeking a new trial.

III.

In a post-conviction relief action, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Stalk v. State, 375 S.C. 289, 297, 652 S.E.2d 402, 405 (Ct. App. 2007) (citations omitted); Rule 71.1(e), SCRPC. “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.’” Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 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. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). “In order to prove that counsel was ineffective, a PCR applicant must show that: (1) counsel’s performance was deficient; and (2) there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Id. (citations omitted). “Furthermore, when a defendant’s conviction is challenged, ‘the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. (citations omitted). “There is a strong presumption that counsel rendered adequate

assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id. (citations omitted). The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

Respondent submits that the Applicant will not be able to meet his burden of proof as to any of his claims. However, because the allegations may raise questions of fact that the record does not conclusively refute, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation, claim, or statement contained within the Application not expressly admitted, qualified, or explained is DENIED.

V.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held.

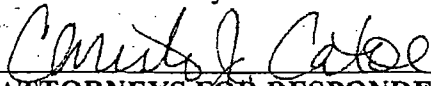
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

March
~~February~~ 1, 2010

SE
file

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Nicholas L. Parker, 320005,)

v.)

State of South Carolina,
Respondent.)IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2010-CP-22-0190

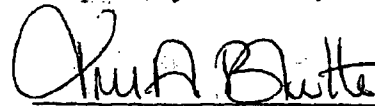
AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

The Applicant, by and through his Attorney, Tricia A. Blanchette, would amend his Application for Post Conviction Relief filed on February 1, 2010, by adding the following specific allegations to his original allegation of ineffective assistance of counsel for failure to conduct an independent investigation and prepare for trial, failure to speak to or utilize defense witnesses, and failure to object or investigate coaching of the victim / state witness:

1. Ineffective assistance of trial counsel for failure to prepare and investigate by obtaining all necessary phone records.
2. Ineffective assistance of trial counsel for stipulating to the admissibility of prior violence at trial.
3. Ineffective assistance of trial counsel for failure to ensure that the Applicant had full knowledge and understanding when he rejected the plea offered by the State.
4. Ineffective assistance of trial counsel for failure to call witnesses, specifically the Applicant, or present argument during the Jackson v. Denno hearing.
5. Ineffective assistance of trial counsel for failure to present viable argument during the suppression hearing on the constitutionality of the search and seizure.
6. Ineffective assistance of trial counsel for failure to address the amendment of the indictment with the Applicant and to ensure that the Applicant was present in the courtroom when the indictment was amended.

7. Ineffective assistance of trial counsel for the failure to call vital defense witnesses.
8. Ineffective assistance of trial counsel for failure to properly advise the Applicant regarding the lesser mental state of knowing, which was applicable to the kidnapping charge, and ineffective assistance of counsel for presenting testimony and argument on the mental state of intent, which was not applicable to the kidnapping charge.
9. Ineffective assistance of trial counsel for failure to properly advise and prepare the Applicant before taking the stand. Such failure resulted in trial counsel eliciting damaging and irrelevant testimony. Ineffective assistance of counsel for failure to raise a confrontation clause violation during the Applicant's cross examination.
10. Ineffective assistance of trial counsel for failure to enter a contemporaneous objection to the State's closing argument.
11. Ineffective assistance of trial counsel for failure to present a viable directed verdict argument.
12. Ineffective assistance of counsel for failure to present any argument or move for a mistrial when Attorney Colvin argued that the State had violated the sequestration order.
13. Ineffective assistance of counsel for failure to move for a mistrial when an extra juror was involved in the jury deliberation.
14. Ineffective assistance of appellate counsel for failure to properly raise all meritorious issues on appeal.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

March 28 2011
Columbia, SC

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

Nicholas L. Parker, 320005,)

v.)

State of South Carolina,
Respondent.)IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

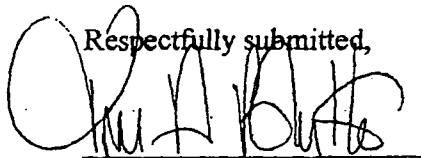
2010-CP-22-0190

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

The Applicant, by and through his Attorney, Tricia A. Blanchette, would amend his Application for Post Conviction Relief filed on February 1, 2010, by adding the following specific allegations to his original allegations and those made through his Amendment dated March 28, 2011:

1. Ineffective assistance of trial counsel for failure to request that the trial court charge the jury on the lesser charge offense of false imprisonment as was argued in the Applicant's direct appeal.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

July 27, 2011
Columbia, SC

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS
2010-CP-22-00190

COUNTY OF GEORGETOWN

NICHOLAS PARKER,

-vs-

STATE OF SOUTH CAROLINA,

Defendant.

Augst 24, 2011

B E F O R E:

HONORABLE STEVEN H. JOHN

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

TRICIA BLANCHETTE, Esquire
Attorney for the Petitioner

CHRISTINA J. CATOE, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

I-N-D-E-X

WITNESS:PAGE:

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Direct Examination by Ms. Blanchette

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PETITIONER'S EXHIBITS:

1 (DNA Analysis)
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P-R-O-C-E-E-D-I-N-G-S

(Convened at 10:01 a.m.)

1 THE COURT: This is the matter of State of
2 South Carolina versus Nicholas Parker. This is
3 2010-CP-22-190, State of South Carolina, Georgetown
4 County, Nicholas Parker, Applicant, versus State of
5 South Carolina, Respondent, post conviction relief
6 application as filed by Mr. Parker.
7

8 It appears that Mr. Parker was tried and
9 found guilty by a jury of kidnapping but not guilty
10 of burglary and was sentenced to 25 years for the
11 kidnapping by the trial judge. In his application
12 Mr. Parker has alleged ineffective assistance of
13 counsel on the basic ground of failure to conduct
14 independent investigation, prepare for trial,
15 failure to speak to or utilize defense witnesses,
16 failure to object or investigate coaching of State
17 witnesses, and he is seeking a new trial.

18 Any other background information that we
19 need to place on the record, Miss Catoe?

20 MS. CATOE: Not from the State's perspective,
21 Your Honor.

22 THE COURT: All right. And your name is
23 Blanchette, is that correct?

24 MS. BLANCHETTE: Yes, sir, Tricia Blanchette,
25 Your Honor.

1 THE COURT: All right, ma'am. And the Court
2 stated what appears to be the grounds for Mr.
3 Parker's post conviction relief application. Is
4 that your understanding?

5 MS. BLANCHETTE: It is, Your Honor, except
6 for the fact that we filed a more detailed
7 amendment on March 28, 2011, and I want to make
8 sure you have a copy of that. That specifically
9 alleges fourteen grounds.

10 THE COURT: Okay, I'm sorry, I did see that.
11 That is farther in the file, ineffective assistance
12 of trial counsel for failure to request that the
13 trial court charge the jury on the lesser offense
14 of false imprisonment as was argued in applicant's
15 direct appeal.

16 All right. This amendment was filed -- it
17 is dated March 28, 2011. Do you know when it was
18 filed?

19 MS. BLANCHETTE: Let me check, Your Honor,
20 and see if I have that.

21 THE COURT: Yes, there is an amendment dated
22 March 28 and then you have another amendment that
23 is dated July 27th, that was the failure to request
24 the trial court charge the jury on the lesser
25 charge of false imprisonment. There are two

1 amendments.

2 MS. BLANCHETTE: Yes. The last amendment was
3 filed August 5th, 2011, and I'm looking for the
4 date on the March amendment.

5 THE COURT: That's all right.

6 All right, Miss Catoe, are you aware of both
7 these amendments?

8 MS. CATOE: Yes, Your Honor.

9 THE COURT: And prepared to go forward with
10 those?

11 MS. CATOE: Yes, sir.

12 THE COURT: Very good. All right, Miss
13 Blanchette, if you want to go forward that will be
14 fine.

15 MS. BLANCHETTE: Your Honor, I have already
16 spoken with Miss Catoe about one further verbal
17 amendment that I would like to put on the record
18 today. That is an amendment pursuant to United
19 States versus Cronin. We're alleging that counsel
20 failed to subject the State's case to a meaningful
21 adversarial process, thus rendering a denial of his
22 Sixth Amendment rights, which can make the
23 adversarial process presumptively unreliable, and
24 that would be an allegation pursuant to United
25 States versus Cronin.

1 THE COURT: Okay. And I appreciate that. I
2 assume through your questioning of Mr. Parker you
3 will give me some specific grounds. I mean, that
4 is a mighty general ground, but you will have
5 something that will indicate why --

6 MS. BLANCHETTE: Yes, Your Honor. Also
7 pursuant to Rule 15(B) of the South Carolina Rules
8 of Civil Procedure we would just amend to conform
9 with the evidence and testimony presented today.

10 THE COURT: All right.

11 MS. BLANCHETTE: But that is a specific
12 allegation that may come out of the testimony and
13 evidence, that wasn't already alleged.

14 THE COURT: All right, very good. All right,
15 why don't you call your witness.

16 MS. BLANCHETTE: Your Honor, I would call Mr.
17 Roland Ward to the stand.

18 THE COURT: All right, please come around and
19 be sworn, sir.

20 KENNETH ROLAND WARD, JR.,
21 after being first duly sworn, testified as follows:

22 THE CLERK: Would you state your name for the
23 record, please?

24 THE WITNESS: Kenneth Roland Ward, Jr.

25 THE COURT: Spell year last name please, sir.

1 THE WITNESS: W-a-r-d.

2 THE COURT: Very good. Have a seat. You
3 need to scoot your chair up real close to that
4 microphone. I can hardly hear a word you're
5 saying, so you need speak up.

6 THE WITNESS: Yes, sir.

7 THE COURT: All right, Miss Blanchette.

8 DIRECT EXAMINATION

9 BY MS. BLANCHETTE:

10 Q Mr. Ward, how is it you know Mr. Nicholas
11 Parker?

12 A He's my older cousin.

13 Q Okay. And despite being related to Mr.
14 Parker, you're here today to tell the truth and
15 only the truth. Is that correct?

16 A Yes, ma'am.

17 Q Okay. Now, going back to the time of this
18 event, January, 2006, did you have any involvement
19 with Mr. Parker on that day?

20 A No, ma'am. I didn't see him until later on
21 that night.

22 Q Were you present in the home when him and the
23 victim returned?

24 A Yes, ma'am.

25 Q Okay. And did she appear to be there against

1 her will or under any type of duress?

2 A No, ma'am.

3 Q And since you were present in the home that
4 day were you willing to talk with his defense
5 attorney about what you saw and heard?

6 A Yes, ma'am.

7 Q Okay. And were you willing to testify at his
8 trial?

9 A Yes, ma'am.

10 Q Okay. Did you attend his trial?

11 A Yes, ma'am.

12 Q Were you called as a witness at his trial?

13 A No, ma'am.

14 Q Okay. Do you know why you were not called as
15 a witness at the trial?

16 A No, ma'am.

17 Q Did you have any other involvement in this
18 case with your cousin?

19 A No, ma'am, besides just trying to deal with
20 it.

21 Q Were you with him when he turned himself in?

22 A Yes, ma'am.

23 Q What do you remember from that day?

24 A That day I remember he came over to turn his
25 self in so that my grandmother could be released.

1 He came, waited for my father to get home to
2 transport him to Georgetown so he could meet with
3 officers to turn himself in but, I mean, it was
4 just, that's kind of a while back but it wasn't
5 really nothing, you know, besides his coming to
6 turn himself in.

7 Q And did you ever have the opportunity to tell
8 his defense attorney about those two events, the
9 day they were at the house and the day he turned
10 himself in?

11 A No, ma'am. He never really came and talked
12 to me. He just asked me if I was present and I
13 told him yes and he never, never came and
14 questioned me again.

15 Q Is there anything else that you would like to
16 tell the Court today about your cousin's case?

17 A I don't think it was really what it was said
18 to be, I don't think it was nothing like what it
19 was portrayed to be. In my eyes I didn't see
20 nothing of what they tried to say it was, nowhere
21 near it.

22 MS. BLANCHETTE: Your Honor, I have no
23 further questions.

24 THE COURT: All right. Cross-examination,
25 Miss Catoe?

1 MS. CATOE: Yes, Your Honor, may it please at
2 the Court.

3 CROSS EXAMINATION

4 BY MS. CATOE:

5 Q Mr. Ward, you have a conviction from December
6 of 2009 for financial transaction card fraud over
7 \$500, is that right?

8 A Yes, ma'am, but that is not the correct
9 price, it was \$102.50.

10 Q All right. And you were not present at the
11 trailer park on January 29th, 2006?

12 A No, ma'am.

13 MS. CATOE: Thank you.

14 THE COURT: You can step down, sir.

15 (Witness excused).

16 MS. BLANCHETTE: Your Honor, I would call
17 Kenneth Ward to the stand.

18 THE COURT: All right, please come around and
19 be sworn, sir.

20 KENNETH ROLAND WARD, SR.,
21 after being first duly sworn, testified as follows:

22 THE CLERK: Will you state your name for the
23 record, please?

24 THE WITNESS: Kenneth Roland Ward, Sr.

25 THE CLERK: You may have a seat.

1 THE COURT: Your middle name again, sir, was
2 what?

3 THE WITNESS: Roland, R-o-l-a-n-d.

4 THE COURT: You're Senior?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right, go ahead, Miss
7 Blanchette.

8 MS. BLANCHETTE: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q Mr. Ward, how is it you know the witness that
12 I just called?

13 A He's my son.

14 Q Okay. And you are Kenneth Roland Ward, Sr.,
15 is that correct?

16 A Yes, ma'am.

17 Q How is it that you know Mr. Nicholas Parker?

18 A He's my nephew.

19 Q Okay. And even though he's your nephew and
20 you are family you are here today to tell the truth
21 and nothing but the truth, is that correct?

22 A Yes, ma'am.

23 Q Now, Mr. Ward, were you present when Mr.
24 Parker turned himself in in this case?

25 A Yes, ma'am.

1 Q What do you recall from that day?

2 A He called me saying he was going to turn his
3 self in. I told him I was at work, if he would
4 meet me at my mom's house.

5 Could I get some water?

6 THE COURT: Yes. Madam Bailiff, you can use
7 that one or use this one.

8 Go ahead.

9 BY MS. BLANCHETTE:

10 Q He called you and said he wanted to turn
11 himself in?

12 A Correct.

13 Q What happened after that?

14 A I told him when I got off work I would come,
15 so me and my older brother came to my mom's, picked
16 him up, brought him to Georgetown.

17 Q And were you, did you have any firsthand
18 knowledge or were you a witness to the
19 conversations he had once he arrived at law
20 enforcement to turn himself in?

21 A Yes, ma'am. I was in contact with the
22 arresting officer, trying to make a deal for him to
23 turn himself in safely because they had came to my
24 mom's residence, arrested her, didn't give her a
25 chance to get clothes or nothing, so I didn't want

1 him treated the same way. I told them I would
2 bring him to Georgetown. When I got here they
3 didn't advise him of his rights, and our goal was
4 to get my 73 year old mom out of jail and it took
5 four days after that for them to do what they said
6 they would do.

7 Q Now, could you all afford an attorney or did
8 you have an attorney there with you when he turned-
9 himself in?

10 A No, ma'am.

11 Q And were you there kind of acting as a father
12 figure for him?

13 A Yes, ma'am.

14 Q Now, is there anything else regarding the
15 situation when he turned himself in, any other
16 information you would like to provide to the Court?

17 A That's about it.

18 Q Okay. Did you ever have the opportunity to
19 speak with his attorney prior to trial?

20 A No, I did not.

21 Q Would you have been willing to speak with his
22 attorney about what you just told us today?

23 A Yes, I would have.

24 Q Were you present at Mr. Parker's trial?

25 A It was four days, I was here for three of

1 them.

2 Q And if his attorney would have asked you
3 would you have been willing and available to
4 testify at that trial?

5 A I would have testified.

6 MS. BLANCHETTE: Your Honor, I have no
7 further questions.

8 THE COURT: Cross-examination.

9 MS. CATOE: I have nothing for this witness,
10 Your Honor.

11 THE COURT: All right. You may step down,
12 sir.

13 (Witness excused).

14 MS. BLANCHETTE: Your Honor, I would call
15 Joshua Parker to the stand.

16 THE COURT: Please come around and be sworn,
17 sir.

18 JOSHUA JAMES PARKER,
19 after being first duly sworn, testified as follows:

20 THE CLERK: Would you state your name for the
21 record?

22 THE WITNESS: My name is Joshua James Parker.

23 THE CLERK: You may have a seat.

24 All right, go ahead, Miss Blanchette.

25 DIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q Mr. Parker, how is it you know David Parker?

3 A He is my older brother.

4 Q And since he is your older brother, does that
5 any way affect your ability to tell the truth here
6 today?

7 A No, ma'am.

8 Q And you understand you're here to only tell
9 the truth?

10 A Yes, ma'am.

11 Q Now, Joshua, do you remember back to January
12 29th, 2006?

13 A This is not very clear but I was in the home
14 when she and him come to the house.

15 Q Okay. So you were in the home when Yolinda
16 and your brother came back to the house, is that
17 correct?

18 A Yes, ma'am.

19 Q Did you notice anything that appeared as if
20 she had been kidnapped, was she under duress, was
21 she not given access to the phone, anything of that
22 nature?

23 A No, ma'am.

24 Q Had you ever had the opportunity to speak
25 with his defense attorney about what you saw that

1 day?

2 A No, ma'am. I was never questioned or
3 anything.

4 Q And who was also present when you were in the
5 house that day?

6 A It was my child's mother.

7 Q And what is her name?

8 A Her name was Deborah Cousey.

9 Q Is she able to be here with us today?

10 A No. She got in a car accident back in '06
11 and she's deceased.

12 Q And prior to that horrific car accident would
13 she have also been willing to speak with his
14 defense attorney about what she saw and heard that
15 day?

16 A Yes.

17 Q And were you at his trial?

18 A No, ma'am. I wasn't able to make it.

19 Q Okay. If his attorney had requested you be
20 at his trial to testify would you have been there?

21 A Yes, ma'am.

22 Q And you would have been willing to testify?

23 A Yes, ma'am.

24 MS. BLANCHETTE: Could I beg the Court's
25 indulgence for one moment?

1 THE COURT: Yes, ma'am.

2 MS. BLANCHETTE: Your Honor, I have no
3 further questions.

4 THE COURT: All right. Cross examination.

5 MS. CATOE: May it please the Court, Your
6 Honor.

7 THE COURT: Yes, ma'am

8 CROSS EXAMINATION

9 BY MS. CATOE:

10 Q Mr. Parker, is it correct that you have two
11 convictions for grand larceny, one for between
12 \$1,000 and \$5,000 and one for over \$5,000 from the
13 year 2010?

14 A Correct.

15 Q All right. And you weren't present at the
16 trailer park on January 29th, 2006?

17 A No, ma'am.

18 Q Where were you during trial?

19 A I believe I was working.

20 Q Okay.

21 A Or at home with my kids.

22 Q You weren't in jail at the time?

23 A I don't believe so.

24 MS. CATOE: All right. Nothing further.

25 Thanks.

1 THE COURT: Yes, ma'am.

2 (Witness excused).

3 MS. BLANCHETTE: Your Honor, I would call
4 Methais Parker to the stand.

5 THE COURT: All right, come around and be
6 sworn, sir.

7 METHAIS PARKER,
8 after being duly sworn, testified as follows:

9 THE CLERK: Would you say your name for the
10 record.

11 THE WITNESS: Methais Arthell Parker.

12 THE CLERK: Spell your first name.

13 THE WITNESS: M-e-t-h-a-i-s.

14 THE COURT: What is your middle name?

15 THE WITNESS: Arthell, A-r-t-h-e-l-l.

16 THE COURT: Very good, thank you.

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q Mr. Parker how is it you know the applicant
20 Nicholas Parker?

21 A He's my older brother.

22 Q And since he is your older brother, you
23 understand despite that relationship you're here
24 today to tell only the truth in court, is that
25 correct?

1 A Yes, ma'am.

2 Q Now, Mr. Parker, I'm going to ask you about
3 the time you were at your grandmother's house. Did
4 you receive a phone call from your brother while he
5 was incarcerated at the Georgetown County Detention
6 Center?

7 A Yes, ma'am, a few times.

8 Q Okay. On one of those occasions was the
9 victim in your grandmother's home when you received
10 a phone call from your brother?

11 A Yes. She was there on a couple different
12 occasions but she did speak with him on one.

13 Q What do you remember about that one occasion
14 where she spoke with your brother?

15 A She just spoke and was filling his head up
16 with that she was going to like help him out during
17 the trial and all, you know what I'm saying, that
18 it wasn't what it was, but none of that ever came
19 true.

20 Q I'm sorry, go ahead.

21 A Okay.

22 Q Were you present at your brother's trial?

23 A No, ma'am.

24 Q Okay. Did you have the opportunity to speak
25 with his defense attorney?

1 A No, ma'am. I never really got involved in
2 all that, like in the testimony.

3 Q Now, you are here today and if his defense
4 attorney had contacted you and said he needed you
5 at trial would you have been there to testify?

6 A Yes, ma'am.

7 Q Methais, is there anything else you would
8 like to tell the Court, that I didn't ask you?

9 A No, ma'am.

10 MS. BLANCHETTE: Your Honor, if I could just
11 beg the Court's indulgence one moment.

12 THE COURT: Yes, ma'am.

13 MS. BLANCHETTE: Your Honor, I have no
14 further questions.

15 THE COURT: Cross-examination.

16 MS. CATOE: May it please the Court, Your
17 Honor.

18 CROSS EXAMINATION

19 BY MS. CATOE:

20 Q Mr. Parker, is it correct that you have one
21 conviction for grand larceny in an amount between
22 one and five thousand dollars from August, 2005?

23 A Yes, ma'am.

24 Q All right. And the phone call you just
25 testified about, that occurred well after the date

1 of the offense on January 29th, 2006. Is that
2 correct?

3 A It happened in between the date of it
4 happening and before he went to trial.

5 Q After the date of the offense, though?

6 A Yes.

7 Q Okay.

8 MS. CATOE: Nothing further. Thank you.

9 MS. BLANCHETTE: Your Honor, I have nothing
10 further.

11 THE COURT: You may step down, sir.

12 (Witness excused).

13 MS. BLANCHETTE: Your Honor, I next call Mr.
14 Nicholas Parker. He is going to be a lengthy
15 witness so I wanted to make sure you wanted me to
16 go forward.

17 THE COURT: Go ahead, ma'am.

18 MS. BLANCHETTE: Then, Your Honor, I call
19 Nicholas Parker to the stand.

20 THE COURT: Come around and be sworn, sir.

21 NICHOLAS PARKER,
22 after being first duly sworn, testified as follows:

23 THE CLERK: Would you state your name for the
24 report, please.

25 THE WITNESS: Nicholas Lee Parker.

1 THE CLERK: You may have a seat.

2 MS. BLANCHETTE: Your Honor, if I may address
3 a matter of housekeeping?

4 THE COURT: Yes, ma'am.

5 MS. BLANCHETTE: It is my understanding from
6 Mr. Parker this morning that he was not allowed to
7 bring a copy of the transcript with him. His
8 testimony is going to be very specific as to the
9 transcript. I can provide him my copy of the
10 transcript if the Court does not mind.

11 THE COURT: That's fine, I don't have a
12 problem with it

13 MS. BLANCHETTE: Thank you, Your Honor.

14 THE COURT: Go ahead.

15 MS. BLANCHETTE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. BLANCHETTE:

18 Q Mr. Parker, do you recall going to trial on
19 January 29th through February 2nd, 2007?

20 A Yes, ma'am.

21 Q And that was here in Georgetown County, is
22 that correct?

23 A Yes, ma'am.

24 Q Do you recall who the judge was that presided
25 over your trial?

1 A John Hayes, III.

2 Q Okay. Do you recall who represented you at
3 that trial?

4 A Reuben Goude.

5 Q You went to trial on this incident, or a
6 kidnapping charge that was derived from the date of
7 January 29th, is that correct?

8 A Yes, ma'am.

9 Q You went to trial on two indictments. What
10 all were you indicted for?

11 A Burglary first and kidnapping.

12 Q And what was the outcome of the burglary
13 first indictment?

14 A Not guilty.

15 Q What was the outcome of the kidnapping
16 indictment?

17 A Guilty.

18 Q And what type of sentence did you receive on
19 that?

20 A Twenty-five years.

21 Q Did you have a direct appeal after your
22 trial?

23 A Yes, ma'am, but it didn't have no merit
24 because my lawyer, he never brought up any
25 objections during the trial.

1 Q Do you recall the Public Defender filed an
2 Anders brief on your behalf?

3 A Yes, ma'am.

4 Q Did Miss Kathrine Hudgins handle that for
5 you?

6 A Yes, ma'am.

7 Q That was, your conviction was affirmed by the
8 Court of Appeals on October 8th, 2009, is that
9 correct?

10 A Correct.

11 Q Let's go back to the very beginning. We have
12 had some witnesses here testify about how it was
13 you came to be arrested but can you explain how
14 that happened, how it was that you became, that you
15 were arrested in this case?

16 A Well, Investigator Hill called me that next
17 Monday, which would have been the 30th, and he told
18 me I had a kidnapping and a burglary, that I needed
19 to turn myself in and I stated if I get a ride I
20 would come and I would see him. But before I could
21 get a ride the law come to the house and I left, so
22 I never turned myself in. Then I found my grandma,
23 she got locked up, and they said in order to get
24 her out I had to turn myself in.

25 Q Who was with you when you went to turn

1 yourself in?

2 A My uncle and my cousin Roland.

3 Q We'll get into some more detail about that
4 later, but when you turned yourself in did you go
5 for bond immediately, or what happened?

6 A I think it was the next morning I went up and
7 they denied my bond.

8 Q Did you ever get a bond in your case?

9 A It was all the way to December, I think
10 December 11 of 2006.

11 Q Now, in March, 2006, do you remember that you
12 were appointed Mr. Goude to assist you with your
13 case?

14 A Yes, ma'am.

15 Q And did you ever have a preliminary hearing?

16 A No, ma'am. He waived it without my
17 permission.

18 Q Now, Mr. Parker, did you ever have the
19 opportunity to go over the arrest warrant with Mr.
20 Goude and ask him about it?

21 A I had opportunity to sit down with him but he
22 never discussed the paperwork, he always talked
23 about other things.

24 MS. BLANCHETTE: Your Honor, may I approach
25 the witness?

1 THE COURT: Yes, ma'am.

2 Q Mr. Parker, I'm going to hand you a copy of
3 the kidnapping indictment. Did you have the
4 opportunity to go over that indictment with Mr.
5 Goude prior to trial?

6 A No, ma'am. I had opportunity but we never
7 did.

8 Q Was there anything regarding that indictment
9 that you specifically wanted to discuss with him?

10 A Yes. At the top it says for witnesses, says
11 Georgetown Sheriff's Department, doesn't have a
12 specific name.

13 Q And was that a concern you were able to
14 address with him prior to trial?

15 A No, ma'am.

16 Q Now, do you recall meeting with him prior to
17 trial?

18 A Yes. I think we met three times.

19 Q Let's talk about your first meeting. Do you
20 remember kind of ballpark when that was and what
21 happened?

22 A It was like the middle of November, '06. He
23 come but it wasn't just him by his self, it was all
24 the lawyers and all the Solicitors came to the
25 jailhouse because the jail is crowded and they were

1 trying to get people to plead to get out, and so he
2 offered me a plea for 13 to 16 and I told him, I
3 started trying to give him a little information
4 about, back story of my trial, I mean about the
5 case, and he told the Solicitor hold on, he needed
6 to talk to me, and I talked to him maybe five
7 minutes briefly, then he told me he would come meet
8 with me after that for us to discuss it further.

9 Q Now, Mr. Parker, remember to speak loudly and
10 clearly because the court reporter has to take down
11 everything we say here today.

12 A All right.

13 Q You say he came with a number of other
14 lawyers. Were those lawyers working on your case
15 or who were they?

16 A No. They were in General Sessions Court for
17 the whole population of Georgetown.

18 Q Did you all have a second meeting?

19 A Yes. The second meeting took place the
20 second Friday, two Fridays before I went to trial.

21 Q What do you remember happening at that
22 meeting?

23 A He come to talk to me but we never even
24 discussed any of it because I asked about my Rule
25 5, I hadn't got that. He had some paperwork we was

1 going to go over but he made racist comments and
2 stuff, so I felt that me and him, we wasn't on the
3 same page and if that is what he come to talk about
4 we were wasting both of each other's time.

5 Q I will ask if you can explain the comment in
6 as neutral terms as possible.

7 A He told me don't wear a tee-shirt saying kill
8 whites, and I looked at him like what are you
9 talking about? He said, "You don't want to walk
10 down a white neighborhood with a black tee-shirt
11 saying I like black people." I said, "Man, I
12 really don't follow what you're saying." He said,
13 "Don't go in the courtroom acting like a hard core
14 white boy rapper?" I said, "Are you saying that
15 because of the way I talk, because I got accent,"
16 because I'm from down in Charleston and, you know,
17 me and him didn't see eye to eye and I felt like I
18 didn't need to talk to him any more so he let me go
19 back to my dorm.

20 Q After that second meeting that ended up
21 abruptly did you all have another meeting?

22 A Yes. It was Friday before I went to trial.

23 Q And what happened during that meeting?

24 A When we first met he was already aggitated
25 because we couldn't sit face to face, he had to

1 talk to me behind the glass, they wouldn't let him
2 come in to talk me. He said, "I tried to get you a
3 lower plea, for ten." I said, "What about doing it
4 in front of a certain judge?" He said that wasn't
5 happening, so I'm, "Look, what are we going to do?"
6 He said, "I guess go to trial," so I agreed with
7 it.

8 Q Did you all discuss sentences, what the plan
9 of attack was going to be, or strategy?

10 A No, ma'am.

11 Q Did you ever have the opportunity to go over
12 discovery with him?

13 A No. I got bond December 11th, got my
14 discovery maybe a week and a half after that, maybe
15 three or four weeks before I went to trial.

16 Q Did you receive your file from SLED, or the
17 South Carolina Law enforcement Division?

18 A Yes, ma'am.

19 Q When do you recall receiving that?

20 A Maybe December, '06?

21 MS. BLANCHETTE: Your Honor, may I approach
22 the witness?

23 THE COURT: Yes, ma'am.

24 Q Mr. Parker, could you identify what this
25 appears to be, for the record?

1 A Yes, ma'am. Its a DNA analysis from SLED.

2 THE COURT: I'm sorry, I didn't understand
3 the answer.

4 THE WITNESS: DNA analysis from SLED, SLED
5 report.

6 THE COURT: Okay.

7 BY MS. BLANCHETTE:

8 Q Does it list your case information on this
9 report?

10 A Yes, ma'am.

11 MS. BLANCHETTE: Your Honor, at this time I
12 would move Applicant's Number 1, the DNA analysis.

13 THE COURT: Any objection?

14 MS. CATOE: No, Your Honor.

15 THE COURT: Let's have it marked, please.

16 (DNA analysis marked and received in evidence
17 as Petitioner's Exhibit Number 1).

18 MS. CATOE: Your Honor, I would appreciate a
19 copy.

20 THE COURT: Yes, ma'am. Do you have one?

21 MS. BLANCHETTE: I do.

22 THE COURT: Thank you.

23 BY MS. BLANCHETTE:

24 Q Mr. Parker, I'm going to hand you another
25 document. If you could, please identify it for the

1 record.

2 A This is the trace evidence from SLED, SLED
3 report.

4 Q And does this also have your case information
5 on it?

6 A Yes, ma'am.

7 MS. BLANCHETTE: Your Honor, at this time I
8 would move the trace evidence report as Applicant's
9 Number 2.

10 THE COURT: Any objection?

11 MS. CATOE: No, Your Honor.

12 THE COURT: You may have it marked.

13 (SLED trace evidence report marked and
14 received as Petitioner's Exhibit Number 2).

15 BY MS. BLANCHETTE:

16 Q Mr. Parker, could you also identify that
17 document for the record?

18 A This is the SLED lab report for latent
19 prints.

20 MS. BLANCHETTE: Your Honor. --

21 Q I'm sorry. Does this have your case
22 information at the top?

23 A Yes, ma'am.

24 MS. BLANCHETTE: Your Honor, at this time I
25 move the latent print report as Applicant's Exhibit

1 Number 3.

2 THE COURT: Any objection?

3 MS. CATOE: No, Your Honor.

4 THE COURT: You may have it marked.

5 (Latent print report marked and received in
6 evidence as Petitioner's Exhibit Number 3).

7 THE COURT: Applicant's 1, 2 and 3 are in
8 evidence without objection.

9 BY MS. BLANCHETTE:

10 Q Mr. Parks, I provided you these three SLED
11 reports. Did you have an opportunity to go over
12 those with your attorney prior to trial?

13 A I never went over them but I had asked him
14 some questions about it.

15 Q Did you think it was important for you to
16 review the SLED reports prior to trial?

17 A Yes, ma'am.

18 Q Now, do you know if your attorney did any
19 type of independent investigation in your case?

20 A As far as I know he went to my home and took
21 pictures and he said he talked to my family and got
22 statements from them or whatever but that's all.

23 Q Did you notify him there were people present
24 in the home that day, potential witnesses?

25 A Yes, ma'am.

1 Q Do you know if he hired a private
2 investigator?

3 A No, ma'am, he didn't.

4 Q Okay. Did you ask him to obtain any records
5 from the county jail?

6 A Yes, ma'am. I asked him to obtain the phone
7 records that when I was locked up I had called home
8 and talked to my mother and the victim was at my
9 house, so me and her spoke for a little bit and the
10 next morning I called up and told him the
11 conversation myself and her had, it was vital for
12 me to bring to trial because what she was saying
13 happened on the phone and saying it happened at the
14 time the kidnapping happened, that it was totally
15 different and I felt that would help me at trial.

16 Q Now, did you also request I try to obtain
17 those phone records?

18 A Yes, ma'am.

19 MS. BLANCHETTE: Your Honor, may I approach
20 the witness?

21 THE COURT: Yes, ma'am.

22 BY MS. BLANCHETTE:

23 Q Mr. Parker, the type is rather small but can
24 you identify this for the record, please?

25 A Yes. From Georgetown Detention Center saying

1 that the phone system has been updated so they
2 don't have no tape of the phone calls I made.

3 MS. BLANCHETTE: Your Honor, at this time I
4 move this as Applicant's Number 4.

5 THE COURT: Any objection?

6 MS. CATOE: No, Your Honor.

7 THE COURT: Applicant's 4 is in evidence
8 without objection.

9 (Jail memo marked and received in evidence
10 as Petitioner's Exhibit Number 4).

11 BY MS. BLANCHETTE:

12 Q Mr. Parker, you requested that I also obtain
13 that record but it is no longer available. Isn't
14 that correct?

15 A Yes, ma'am.

16 Q Now, let's just be brief about the witnesses
17 that have been called here today. Did you ask your
18 attorney to talk to your uncle Mr. Kenneth Ward?

19 A Yes, ma'am.

20 Q And did you think it was important that he
21 hear about when you went to turn yourself in?

22 A Yes, ma'am.

23 Q Did you ask that he speak with your cousin by
24 the name of Roland Ward?

25 A Yes, ma'am.

1 Q And did you think it was important for him to
2 speak with him about the information he testified
3 to today?

4 A Yes. They heard the conversations between me
5 and him, Investigator Hill.

6 Q Did you also ask him to speak with your
7 brother Joshua?

8 A Yes, ma'am.

9 Q And why was it that you wanted him to speak
10 with your brother Joshua?

11 A Because Debbie, she had wrote an affidavit
12 saying she would testify for me at trial but, I
13 don't understand why Reuben didn't get her to say
14 what she seen happen, you know what I'm saying,
15 wrote it down, that way he can produce that in
16 evidence instead of call her but he said, "Just
17 write it, she will come to trial and when it come
18 time to call your witnesses I will call you as a
19 witness."

20 Q Mr. Parker, you are so familiar with your
21 case, I ask you to explain who Debbie is for all of
22 us.

23 A That's my brother's girlfriend.

24 Q She is now deceased, is that correct?

25 A Yes, ma'am.

1 Q As far as your brother Methais, did you ask
2 him to speak with Methais?

3 A Yes, ma'am.

4 Q You wanted him to testify at trial regarding
5 information he gave today?

6 A Right.

7 Q Is it your understanding he was a witness to
8 that phone call we tried to get a recording of?

9 A Yes. He asked her if she wanted to talk to
10 me.

11 Q None of those four witnesses were called at
12 your trial?

13 A No, ma'am.

14 Q Do you have any idea why they were not
15 called?

16 A No, ma'am.

17 Q Do you recall your attorney filing any
18 motions on your behalf?

19 A I asked him to file a Brady motion but I
20 never got no answer back on that. He might have
21 filed a motion for dismissal during the trial or
22 all that but he did that without me knowing.

23 Q Mr. Parker, you previously mentioned that on
24 your first meeting he told you he had a plea offer
25 of 13 to 16 years. Is that correct?

1 A Yes, ma'am.

2 Q At the time he brought that offer to you did
3 he explain what the State's evidence was against
4 you, did he explain to you the elements of the
5 offenses you were being charged with?

6 A No, ma'am.

7 Q Did he explain to you that there is a lesser
8 mens rea or mental state needed for kidnapping or
9 knowledge at the time that he told you about that
10 plea offer?

11 A No, ma'am, he didn't.

12 Q When you spoke with him about that plea offer
13 did you think you had a full understanding of what
14 was necessary to accept or reject that plea offer?

15 A No, ma'am, I didn't.

16 Q Now, what did you tell him in relation to
17 that plea offer? Do you remember?

18 A Yes. I told him that I felt that was too
19 much, I would plead to ten if they would give me
20 ten, and he said he couldn't make it happen.

21 Q Do you remember any other offers in your
22 case?

23 A He might have give me, like after the victim
24 testified on the stand he come to me, he wrote on a
25 paper saying, "They'll give you 15" if you want to

1 take 15," and I was like no, I wouldn't do it.

2 MS. BLANCHETTE: Your Honor, may I approach
3 the witness?

4 THE COURT: Yes, ma'am.

5 Q Mr. Parker, could you please identify that
6 for the record?

7 A Yes, ma'am. That's a letter I wrote him.

8 Q Okay. What is the date on that?

9 A January 2nd, 2007.

10 MS. BLANCHETTE: Your Honor, at this time I
11 would move this letter in as Applicant's Number 5.

12 THE COURT: Any objection?

13 MS. CATOE: No, Your Honor.

14 THE COURT: All right, Applicant's 5 is in
15 evidence without objection.

16 (January 2, 2007, letter marked and received
17 in evidence as Petitioner's Exhibit 5).

18 BY MS. BLANCHETTE:

19 Q Mr. Parker, what was the purpose of this
20 letter dated January 2nd, 2007?

21 A I felt that me and him had a strained
22 relationship between each other and I didn't want
23 him to represent me anymore.

24 Q Were you asking he be relieved?

25 A I asked him to relieve his self. If I fired

1 him I had to have a paid attorney and I didn't have
2 the funds to get a paid attorney.

3 Q What happened after you wrote him that
4 letter?

5 A I had got a response back but all that, when
6 I went to trial I left it on the table, so I don't
7 have that with me. But he still, I supposed to
8 went to trial that March and once I filed that my
9 trial got backed up from March to January.

10 Q So, your trial actually was sooner than you
11 thought it was going to be?

12 A Right.

13 Q Is there anything else regarding that letter
14 and your request for him to be relieved that you
15 would like to tell the Court?

16 A I mean, all that is based on what he said as
17 far as racist comments he had made and the way he
18 went about investigating my case.

19 Q Now, Mr. Parker, I'm going to ask you to open
20 up the transcript that I provided you there.

21 A Huh?

22 Q If you would, look at page 1, please.

23 A Okay.

24 Q Do you recall -- well, if you will look at
25 the transcript, did your indictment get amended at

1 the start of the trial?

2 A Yes, ma'am.

3 Q And were you present when that took place?

4 A No, ma'am.

5 Q Were you aware that that took place?

6 A No, ma'am.

7 Q Did you discuss that with your attorney?

8 A No, ma'am, I didn't.

9 Q Now, prior to trial the issue of a motion to
10 suppress the search and seizure came up. Would you
11 turn to page 23. Look at lines 18 through 19 and
12 then continue through page 25.

13 Did you discuss with your attorney that he
14 was going to make a motion to suppress the evidence
15 due to the search and seizure? Did you discuss
16 that with him prior to trial?

17 A No, ma'am.

18 Q Now, on those pages I pointed out, pages 23
19 through 25, do you see where the State argued you
20 had no standing to attack the search and seizure?
21 Do you see that in the transcript?

22 A Yes, ma'am.

23 Q Now, if you could look specifically at page
24 25, lines 2 through four.

25 A Right.

1 Q What did your attorney offer in his argument?

2 A Nothing, really. He just said, "I made all
3 the motions I want to make."

4 Q Did he provide any argument to the Court?

5 A No, ma'am.

6 Q Now, if you could turn to page 26. Does
7 Judge Hayes indicate he will will hear witnesses on
8 this motion?

9 A Yes, ma'am.

10 THE COURT: What page are you on, please
11 ma'am?

12 MS. BLANCHETTE: Page 26, I believe, Your
13 Honor.

14 A The judge, whatever the judge's name is.

15 Q And did your attorney have any witnesses?

16 A No, ma'am, he didn't bring none forward. I
17 told him about them but he never brought none up.

18 Q If you could, turn to page 221 through 222,
19 please. Let me know if I'm going too quickly.

20 A All right.

21 Q Now, there do you see where Investigator
22 Morrison testified?

23 A Yes, ma'am.

24 Q And in the transcript does he convey that he
25 asked your grandmother and grandfather for consent

1 and they gave consent but they wouldn't sign the
2 form?

3 A Yes, ma'am.

4 Q Okay. And that is what is in your
5 transcript?

6 A Right.

7 Q Did that information come out during the
8 motion to suppress?

9 A No, ma'am.

10 Q Do you feel that your attorney was adequately
11 prepared for the motion and trial?

12 A No, ma'am.

13 Q Mr. Parker, if you could, turn back to page
14 45 and look at lines 14 through 19.

15 A Page 45?

16 Q Uh-huh (Affirmative).

17 A All right.

18 Q Lines 14 through 19.

19 A All right.

20 Q Do you see there where your attorney
21 stipulates to the admission of prior violence
22 between yourself and the victim?

23 A Yes, ma'am.

24 Q Did you discuss that with your attorney prior
25 to trial?

1 A No, ma'am.

2 Q What was your reaction when you heard that at
3 trial?

4 A Really I didn't understand why he even made
5 that motion or brought it in because I didn't see
6 how that would even have anything to do with my
7 trial.

8 Q Now, Mr. Parker, did you make a statement in
9 this case?

10 A Yes, ma'am.

11 Q Okay. And was that when you went and turned
12 yourself in?

13 A Yes, ma'am.

14 Q Okay. If you could, turn to page 294,
15 please.

16 A All right.

17 Q Did your attorney make a motion to suppress
18 your confession?

19 A I think I did, yes.

20 Q Do you recall him making a motion at trial to
21 suppress your confessional statement?

22 A No, ma'am. No ma'am -- oh, here it is.

23 Q Go ahead and read it.

24 A Yes, ma'am, he had.

25 Q Do you see there in the middle of the page,

1 on line 12, where the judge says motion to
2 suppress?

3 A Yes, ma'am, but I don't see where he made a
4 statement.

5 Q Okay. Now, did you talk with him about that
6 motion prior to trial?

7 A No, ma'am.

8 Q Now, Paul Glover was called to the stand.
9 Was he one of the investigators you talked with in
10 this case?

11 A Yes, ma'am. I talked with him because I
12 didn't want to talk to Dusty Morris because he is
13 supposed to be friends of the family, whatever, of
14 the victim, so I told him I didn't want to talk to
15 him when I turned myself in.

16 Q Now, he recounts to the Court his meeting
17 with you. If you would, take a look at page 297,
18 lines 23 through 24. Does he tell the Court he
19 informs you you would be recorded?

20 A Yes, ma'am.

21 Q Could you turn to page 298, lines 12 through
22 19?

23 A Yes, ma'am.

24 Q Does he inform the Court he gave you your
25 Miranda rights?

1 A Yes, he did.

2 Q Could you turn to page 302, beginning on line
3 10, and look through page 303, lines 1 through 6.
4 Did the judge rule that your statement would be
5 admissible?

6 A Yes, ma'am, because I signed my Miranda
7 warnings.

8 Q Now, if you could, turn back to page 301,
9 look at line 23, and then read through to line 12
10 on the next page. Do you recall the judge asking
11 your attorney for witnesses or for grounds for his
12 motion?

13 A Yes, the judge asked him but he didn't have
14 none.

15 Q Okay. And was that somewhat surprising to
16 you, that your attorney made a motion, the judge
17 asked him to put up some evidence on your behalf
18 and he did not have anything?

19 A Yes, ma'am.

20 Q Okay. Now, Mr. Parker, let's flip to your
21 direct testimony. If you could, please, page 418.
22 If you could, look at lines 11 through 19.

23 A All right.

24 Q When you were on the stand did you explain
25 about your uncle bringing you to the police

1 station?

2 A Yes, ma'am.

3 Q And if you could, turn to page 447.

4 A All right.

5 Q If you could, look at lines 7 through 25,
6 please.

7 A All right.

8 Q Do you recall informing the Court that you
9 felt that you were coerced by the officers?

10 A Yes, ma'am.

11 Q If you could, looking at those lines, did you
12 also say anything about wanting an attorney?

13 A Yes. At first when I turned myself in he
14 thought I was going to make a statement but when I
15 sat down, all the gravity of what was going on hit
16 me and I said I think I need an attorney, and then
17 my uncle, he stated, he was like, "Well, if he
18 tells you anything, if he makes a statement will
19 that help him out?" And he was like, "Yes, and
20 help his bond get lower and help his time get
21 lower."

22 Q Okay. Now, Mr. Parker, I pointed out what
23 you said during your direct testimony. You weren't
24 called as a witness during the suppression hearing.
25 Is that correct?

1 A Yes, ma'am.

2 Q Did you during your direct testimony try to
3 explain the situation and what had happened?

4 A Yes, I tried but me and the Solicitor was
5 back and forth arguing back and forth and I got cut
6 off.

7 Q Okay. Your uncle and your cousin that
8 testified about that today, what specifically
9 happened, if you could, kind of go through it for
10 us.

11 A When I turned myself in I sat and talked to
12 Hayward, he was like, "Do you want to make a
13 statement?" I said, "No, I need an attorney." He
14 said, "I thought you were coming to make a
15 statement." I said, "I was but I feel I need an
16 attorney because this is serious." So my uncle, he
17 asked, "Well, if he make a statement will that help
18 him at all?" And Hayward said, "Yes, it will help
19 his bond get lower and help on his time to get
20 lower, too," so I made a statement.

21 Q Now, had you conveyed that information to
22 your attorney before your trial started?

23 A I mean, I didn't tell him face to face but I
24 talked to him on the phone about it.

25 Q So he knew that information prior to the

1 motion to suppress your statement?

2 A Yes, ma'am.

3 Q Now, Mr. Parker, if your statement had not
4 come in would you have taken the stand?

5 A No, ma'am.

6 Q Did you only take the stand because your
7 statement came in?

8 A Correct, because when they showed the video
9 to the courtroom I felt that hurt me more than it
10 would help me.

11 Q Do you think it would have been helpful for
12 you to testify to this fact at the suppression
13 hearing in an attempt to keep your statement out?

14 A Yes, ma'am.

15 Q Okay. Now, during the State's case they used
16 a number of phone records and letters. I'm not
17 going to go through all of those but were you
18 aware, did you ever see those in the discovery that
19 you received?

20 A No, ma'am. I didn't have no discovery.

21 Q Did you have any idea that the State was
22 going to use those in your case against you, prior
23 to trial?

24 A No, ma'am.

25 Q And not to be redundant but did you ever

1 discuss those with your attorney?

2 A No, ma'am.

3 Q Now, regarding the SLED reports, one refers
4 to duct tape they found in the vehicle. Is that
5 correct?

6 A Yes, ma'am.

7 Q On page 250 of your transcript Ila Simmons
8 from SLED testified about that duct tape. Did you
9 have an issue with that whole duct tape testimony,
10 Mr. Parker?

11 A Yes, ma'am, I did, because on the SLED report
12 it said neither my fingerprint nor her fingerprint
13 matched any fingerprints that was on that duct
14 tape.

15 Q And did you also have a concern about the
16 testimony regarding where they found the duct tape?

17 A Yes. They found the duct tape in the truck
18 and in the garage, and it had hair on it and they
19 did a hair analysis and it come back it wasn't even
20 human, it was animal hair.

21 Q Now, did you have an opportunity to go over
22 the reports or did you know that Jennifer Clayton
23 and Ila Simmons were going to testify at your
24 trial?

25 A No, ma'am, not until right when I was in the

1 courtroom.

2 Q Okay. Now, what is the victim's name in the
3 case?

4 A Brenda Mitchell.

5 Q And how is it that you know her, or knew her?

6 A From the past, my mom, my mom's ex-boyfriend
7 and -- well, her dad, he used to live on our
8 daddy's land, she would always be over there, that
9 is how we met.

10 Q Were you two dating?

11 A Yes, ma'am.

12 Q Okay. Now, she was the State's key witness
13 against you, is that correct?

14 A Yes, ma'am.

15 Q Did you see something during your trial that
16 caused you great concern?

17 A Yes, ma'am. She, when the Solicitor would
18 ask her questions she would answer ahead of him.
19 She was skipping ahead and he would slow her down.
20 He would say, "Hold, hold on, let me ask you one
21 question at a time, go through it one at a time."
22 She got so jumbled up he asked for a break. During
23 the break I was sitting down waiting for everybody
24 to come back and the door beside where the judge
25 was sitting come open and she was like looking over

1 a paper or something, like she was just reading
2 what was coming next. I felt that it was like a
3 script she was looking at.

4 Q If you could, look at page 62 through 64 of
5 the transcript, and I will give you some lines in
6 just one moment. If you would, look at page 62
7 through 64, and if you could, look at page 63,
8 lines 8 through 11.

9 A All right.

10 Q Did the Solicitor tell her, you know, "Slow
11 down, just say yes and no to my answers"?

12 A Yes, ma'am.

13 Q Okay. Is that what caused you concern? Did
14 you feel like he was coaching her?

15 A Yes, ma'am. He already went over the
16 statement before she even got on the stand.

17 Q Now, did your attorney object or raise any
18 type of concerns to the Court regarding this
19 conduct?

20 A No, ma'am.

21 Q If you could, turn to page 81 through 86 and
22 just look over those pages briefly, please.

23 This concerns your grandmother, them
24 threatening to take you both to jail that day?

25 A Yes, ma'am.

1 Q And do you see where your attorney objected
2 on page 81?

3 A Yes, ma'am.

4 Q If you could, look at page 84. What was the
5 outcome of his objection?

6 A The Court allowed it in but -- the judge
7 allowed it in.

8 Q Now, there your attorney is objecting to that
9 testimony. Is that correct?

10 A Yes, ma'am.

11 Q And later does he ask you and your
12 grandmother specifically about that?

13 A Yes, ma'am.

14 Q And further put that testimony in front of
15 the jury, is that correct?

16 A Correct.

17 Q Do you know why he asked you and your
18 grandmother about it after he had objected to the
19 State asking about it?

20 A No, ma'am. He didn't do me no good.

21 Q If you could, please turn to page 129. And
22 if you could, look at lines 18 through 22.

23 A All right.

24 Q Does that talk about prior violence, a
25 choking incident that occurred between the two of

1 you?

2 A Yes, ma'am.

3 Q You said you did not know your attorney was
4 going to stipulate to prior violence?

5 A Right.

6 Q Did you know he was going to talk about prior
7 things such as the choking incident?

8 A No. That had nothing to do with what we were
9 in court for.

10 Q And now you understand that your attorney had
11 already stipulated to it, so there was no reason
12 for him to object?

13 A Right.

14 Q Do you have any idea what the purpose was for
15 allowing her to go into that testimony about prior
16 violence?

17 A No, ma'am. My mind was boggled.

18 Q Now, if you could, look at page 197.

19 A All right.

20 Q There is a proffer of her testimony?

21 A Right.

22 Q And if you look over at pages 208 through
23 209, does she talk about that phone call that your
24 brother Methais referenced today?

25 A Yes, ma'am.

1 Q And your attorney was allowed to ask her
2 about that. Is that correct?

3 A Yes, ma'am.

4 Q And had she originally denied making that
5 phone call?

6 A Yes.

7 Q Okay. And you wanted your brother Methais as
8 a witness to further verify that phone call along
9 with the phone call record?

10 A Correct.

11 Q Is there anything else you would like to tell
12 the Court about that phone call, Mr. Parker?

13 A The statement she had made to me over the
14 phone, I feel if he had brought the records and
15 played them in court, everything she said, it
16 wouldn't have been admissible because she would
17 tell me one thing on the record, on the phone
18 record, and another thing in court, she would say
19 something totally different.

20 Q Okay. Now let's talk about the kidnapping
21 charge that you were convicted of. I have already
22 asked you if your attorney went over the statute
23 with you, and you indicated he did not.

24 Is that correct?

25 A Yes, ma'am.

1 Q Did he speak with you at all about the
2 required mens rea or the requirement of knowledge
3 in the case?

4 A We didn't go over nothing, anything like
5 that.

6 Q Did he ever go over a case of State versus
7 Jeffrey with you and address that issue that was
8 decided back in 1994?

9 A No, ma'am.

10 Q Now, if you could, look at your transcript,
11 please, and turn to page 189. Please look at lines
12 2 through 9 and 14 through 25.

13 A Right.

14 Q Do you see where the Court asked your
15 attorney to review the statute?

16 A Yes, ma'am.

17 Q And do you see where the Court explained to
18 your attorney that it does not require intent, it
19 only requires knowledge, to be found guilty?

20 A Correct.

21 Q Okay. Now, if you could, please turn to page
22 480 and look at line -- I'm sorry?

23 A Okay.

24 Q Look at lines 17 through 22.

25 A All right.

1 Q Do you see where you testified that you knew
2 it was wrong but you had no intent?

3 A Right.

4 Q Did you understand that all the State had to
5 prove was that you had knowledge, not intent?

6 A Yes, but what I said there when it sounded, I
7 didn't mean it the way it sounded. I said now
8 that I was in court, everything that happened, now
9 I understand it was wrong then but at the time my
10 mind, I wasn't, I felt like I wasn't myself when it
11 happened because I don't normally do stuff like
12 that.

13 Q But you explained you did not have intent,
14 and did you understand that wasn't the requirement,
15 no intent?

16 A Okay.

17 Q Okay. If you could, turn to page 667, during
18 the request to charge.

19 A All right.

20 Q And look at lines 16 through 24. Did your
21 attorney request assault and battery and accidental
22 injury as lesser included charges?

23 A Yes, ma'am.

24 Q And what is the judge's response?

25 A He asked if he wanted him to charge for

1 littering, too.

2 Q Did he ask at that point for the lesser
3 included of false imprisonment?

4 A No, ma'am. I mentioned that to him before
5 but I didn't understand what false imprisonment
6 really meant. I thought false imprisonment was me
7 being in jail under false imprisonment. He never
8 explained what the real meaning of that was to me.

9 Q Now let's look at your defense attorney's
10 closing argument. If you could, turn to page 694.
11 Begin reading on line 18 and please read through
12 the next page, 695, line 11.

13 A All right.

14 Q Did your attorney explain in his closing
15 argument that if the victim thought for one second
16 she was being kidnapped that is a kidnapping and he
17 went on to explain the State has more and better
18 lawyers but he was doing his best?

19 A Yes, ma'am.

20 Q Did you have concern at that point that that
21 was your defense?

22 A Yes, I did.

23 Q Was he actually somewhat making the State's
24 case for them at that point?

25 A Because he opened doors that they couldn't

1 even open, by him asking me certain questions, then
2 now the Solicitor can cross examine me on and make
3 me look worse on the stand.

4 Q Okay. Let's confine it to the closing
5 argument. Could you also look at page 696, lines 8
6 through 10. Does he explain, on page 696, lines 8
7 through 10, the question is whether you intended to
8 kidnap her? .

9 A Right.

10 Q And had the judge already explained to him
11 the standard was not intent, it was knowledge?

12 A Right.

13 Q And looking back, do you have some concerns
14 that your attorney understood what the State had to
15 prove in your case?

16 A No, not really.

17 Q Do you have concerns that he didn't
18 understand what the State had to prove? Let me
19 rephrase that.

20 A Yes, right, I figured if he didn't understand
21 it, how he going to explain to me right and wrong.

22 Q Now, you did call some witnesses on your
23 behalf. Is that correct?

24 A Yes, ma'am.

25 Q And you chose to take the stand, is that

1 correct, Mr. Parker?

2 A Yes.

3 Q And they reviewed your prior convictions with
4 you and you decided to testify after that. Is that
5 correct?

6 A Yes, ma'am.

7 Q Let's just go through some points of your
8 testimony that I know you want to explain to the
9 Court today.

10 A All right.

11 Q If you can, look at page 352, and on page
12 352, if you could look at lines 17 through 25, Mr.
13 Parker, there you admit fighting with the victim
14 and explained you all had been on drugs?

15 A Yes, ma'am.

16 Q Why would you provide that type information
17 to the jury, Mr. Parker?

18 A Really, I couldn't tell you. I mean, I was
19 just, I was just talking and trying to explain how
20 things, I mean, I think I was trying to explain
21 away how every time we get on drugs that me and
22 her, we got in altercations and stuff like that.

23 Q Had you been charged with any kind of drug
24 offense in this case?

25 A No, ma'am.

1 Q And do you know if the State would have been
2 allowed to ask you about that?

3 A No, ma'am.

4 Q But your attorney asked you about them?

5 A Right.

6 Q Now, if you would turn to page 399, look at
7 lines 6 through 12, please, on 399. And my
8 question is to you, do you admit taping up the
9 victim?

10 A Yes, ma'am.

11 Q And why did you admit to that when you were
12 taking the stand in your defense?

13 A I mean, when I said that I just wanted to
14 tell the truth because everything that she said on
15 the stand and the way the whole trial was going, I
16 felt like it was just all a big lie. To me it felt
17 like a soap opera, everything was just staged and
18 and I just wanted the real truth to be out there.

19 Q And you admitted that again later in your
20 testimony, didn't you?

21 A Yes, ma'am.

22 Q If you could, look at page 456, lines 2
23 through 4. Do you admit that you caused the
24 victim's injuries but tried to explain it was not
25 intentional?

1 A Yes, ma'am.

2 Q And what was your reasoning for doing that,
3 Mr. Parker?

4 A Because I felt, to me, it looked like I
5 wasn't intending to beat her up and take her out of
6 the house, that wasn't even the whole objective
7 when I went there.

8 Q If you could, turn to page 408, lines 20
9 through 23 -- I'm sorry, 408, lines 20 through 23.
10 There do you talk about how your grandma had
11 threatened to take you to jail?

12 A Yes, ma'am.

13 Q Previously your attorney had objected to such
14 testimony. Is that correct?

15 A Right.

16 Q If you could, turn to page 419, and on page
17 419 look at line 5.

18 A Right..

19 Q There you explained why you fled?

20 A Yes, ma'am.

21 Q Okay. What do you explain as the reason for
22 fleeing?

23 A That it was something I didn't do and I was
24 nervous, scared.

25 Q And was that information, do you know if the

1 State could ask you about that, about prior crimes?

2 A I didn't know at the time but I know now they
3 couldn't have brought that up.

4 Q Mr. Parker, I'm going to stop you right here.
5 What was the reason that you were on the stand
6 giving all this testimony to the jury that is
7 essentially damaging to your case?

8 A I mean, because I felt, like I said earlier,
9 that everything that they was saying is not how it
10 happened, I just wanted to give my version of how
11 everything went, you know what I'm saying, they put
12 it together, and they going to understand what
13 really happened, but if I knew what I know now I
14 would have never got on the stand because it just
15 make me look worse.

16 Q And did you talk with your attorney about
17 taking the stand and did he give you advice on what
18 information you should provide when you were on the
19 stand?

20 A No, ma'am. He just told me, "Do you want to
21 get up on the stand or waive it?" I said, "I need
22 to get up on the stand and explain how it
23 happened." I felt forced, really.

24 Q Mr. Parker, let me ask this question. When
25 you went on the stand and later the Solicitor and

1 the judge both pointed out you admit the crime, if
2 you had planned to admit the crime why did you not
3 take the guilty plea?

4 A Because, I mean, my lawyer, he never
5 explained anything to me, so I really didn't
6 understand what I was doing, I just went along with
7 how the Court was going.

8 Q Okay. Mr. Parker, if you could make that
9 decision again would you have accepted the guilty
10 plea instead of going to trial and admitting the
11 crime?

12 A Yes, ma'am.

13 Q And are you alleging today that your attorney
14 was ineffective for not better advising you before
15 you decided to reject the guilty plea and before
16 taking the stand in the case?

17 A Yes, ma'am.

18 Q Okay. Let's continue to look at your
19 testimony. If you could, turn to page 427. There
20 a proffer is done, which means you testified
21 outside the presence of the jury.

22 A Right.

23 Q And the issue is what the Solicitor said to
24 the victim about changing her story. And what was
25 your understanding of whatever the Solicitor had

1 conveyed to the victim?

2 A All that was in the phone record but he had
3 told her if she changed her statement to try to
4 help me in any way the Solicitor then going to give
5 her eighteen months and take her kids from her.

6 Q Okay. And if you could, look at page 429,
7 lines 2 through 3.

8 A All right.

9 Q What was the Solicitor's response to your
10 allegations?

11 A He said he never had that conversation with
12 her.

13 Q But on page 432 were you actually allowed to
14 testify to it?

15 A Yes, sir -- me testify to it?

16 Q Yes. Were you allowed to testify about that?

17 A No.

18 MS. BLANCHETTE: If I could big the Court's
19 indulgence one second?

20 A Yes, I did say something but I didn't get to
21 go into it and explain it like I wanted to.

22 Q If you could, look at lines 11 through 16.
23 Did you testify briefly about it?

24 A Right.

25 Q Okay. But you didn't have the opportunity to

1 fully explain it?

2 A No, ma'am.

3 Q Okay. Now, in the course of your testimony
4 you admitted to 142 phone calls with the defendant,
5 I'm sorry, with the victim. Is that correct?

6 A Yes, ma'am.

7 Q And also introduced two letters?

8 A Right.

9 Q Did you have an understanding those would be
10 introduced through your testimony?

11 A No, ma'am.

12 Q And you actually explained when you were on
13 the stand, on page 444, you keep saying over and
14 over again that you didn't have the phone records
15 to explain your side of the story?

16 A Correct.

17 Q Now, if you could, turn to page 491. Look at
18 lines 24 through 25.

19 A All right.

20 Q If you could, also look at page 493, lines 23
21 through 25. Does the Solicitor ask you specific
22 questions about the bond hearing and interject his
23 recollection of the facts?

24 A Yes, ma'am.

25 Q Did your attorney make any objection to when

1 the Solicitor provided his recollection, of the
2 Solicitor providing the jury the facts?

3 A No, ma'am.

4 Q Did you know the Solicitor could essentially
5 testify to the jury by asking you questions?

6 A Not then but I do now.

7 Q And you are alleging today that your attorney
8 should have objected when the Solicitor recounted
9 his version of that?

10 A Yes, ma'am.

11 Q Now, your mother and your grandmother also
12 testified as part of your defense, is that correct?

13 A Yes, ma'am.

14 Q Do you know if your attorney met with them
15 and prepared them to take the stand?

16 A I know he went to the house and took pictures
17 and talked to everybody but I don't think he
18 discussed anything with them before they got on the
19 stand.

20 Q Okay. Now, if you could, turn to page 534,
21 lines 15 through 18.

22 A All right.

23 Q 534, lines 15 through 18, your mother is
24 testifying and does she explain she lied to the
25 police because she had outstanding warrants?

1 A Yes, ma'am.

2 Q Was that information favorable to you or your
3 case?

4 A No, ma'am.

5 Q Okay. And if you could, just look at pages
6 547 through 549. There your attorney does a
7 proffer outside the presence of the jury about your
8 mother telling the victim made up a story about
9 being kidnapped. Is that what the transcript
10 shows?

11 A Yes, ma'am.

12 Q If you could, look at page 549, line 13.
13 Does the Court ultimately find that her testimony
14 is not relevant because you have already admitted
15 doing the crime?

16 A Right.

17 Q So the judge had keyed in the fact you have
18 admitted through your testimony of doing this
19 crime?

20 A Right.

21 Q Now, if you could, turn to your grandmother's
22 testimony on page 570, lines 16 through 20. Does
23 she explain it was her idea for the victim to come
24 over and go through her boxes?

25 A Yes, ma'am.

- 1 Q And on pages 585 through 586 --
- 2 A All right.
- 3 Q -- does she recount telling you all she was
- 4 going to take you to jail?
- 5 A Yes, ma'am.
- 6 Q And that was information your attorney had
- 7 previously objected to, is that correct?
- 8 A Yes, ma'am.
- 9 Q Let's go through a number of other things she
- 10 testified to that I want to bring to the Court's
- 11 attention. Page 588, lines 12 through 24. Does
- 12 she explain there that she had called the victim's
- 13 mother regarding picking up the kids?
- 14 A Yes, ma'am.
- 15 Q If you could, turn to page 599, lines 13
- 16 through 15. Does she explain there that she
- 17 dropped off the victim and she kissed you goodbye?
- 18 A Yes, ma'am.
- 19 Q If you could, turn to page 601, lines 4
- 20 through 9. Does she explain that she saw the
- 21 victim four times after you were charged?
- 22 A That's correct.
- 23 Q And was one of those times the phone call you
- 24 have been referencing today?
- 25 A Yes.

1 Q And if you could, turn to page 605. Does she
2 explain that she didn't keep you, excuse me, the
3 victim from using the phone?

4 A Yes, she has.

5 Q Now, if you could, turn to page 631, lines 20
6 through 22. Does she explain that you had a
7 tendency to run when the police would come?

8 A Yes, ma'am.

9 Q Was that information in any way helpful to
10 you?

11 A No, ma'am.

12 Q And on page 632, lines 14 through 21, if you
13 could look at those?

14 A All right.

15 Q Does she explain that your mother lied to the
16 police, lied to the police because she had
17 outstanding warrants?

18 A Yes.

19 Q Now, your grandmother isn't here today to
20 testify in your behalf, is that correct?

21 A No, ma'am.

22 Q And that is why you want to point out all
23 these issues in the transcript?

24 A Yes, ma'am.

25 Q And what is the reason that she's not here

1 today?

2 A Because she lives in Tennessee now and she's
3 too old to travel back and forth.

4 Q Now, your grandmother had been arrested, too,
5 is that correct?

6 A Yes, ma'am.

7 Q And did she have an attorney appointed to
8 represent and watch out for her interest in this
9 case?

10 A Yes, ma'am.

11 Q Do you remember what his name was?

12 A I don't remember his first name but his last
13 name is Colvert, Colvin.

14 Q Let's talk about a situation that he was
15 involved in. If you turn to page 608, please. Is
16 Mr. Colvin, if I'm saying that correctly, he says
17 he wants to put a matter on the record that he has
18 discussed in chambers with your attorney and with
19 the judge and he is concerned because your attorney
20 brushed him off about it?

21 A Yes, ma'am.

22 Q Okay. Did you know at that point what he was
23 talking about?

24 A Once he started explaining everything, then I
25 understood, but at the time I didn't know nothing

1 about it.

2 Q Okay. If you could, look at page 607 and 608
3 and just briefly review those. And I will
4 summarize those. Does he explain that the
5 Solicitor was talking to Officer Hayward outside
6 the bathroom regarding testimony?

7 A Yes.

8 Q So, he informed him there was a sequestration
9 order and they should not be talking?

10 A Right.

11 Q And the Solicitor told him it was okay
12 because he was just a reply witness?

13 A Yes.

14 Q Okay. Does he go on to explain, if you look
15 at page 609, and used the word, he used the word
16 the Solicitor accosted him?

17 A Right.

18 Q When he just attempted to ask your
19 grandmother if she needed water, because he said he
20 was talking to a witness?

21 A Right.

22 Q Now, just briefly look over pages 610 through
23 611, at the Solicitor's reply, please.

24 A Right.

25 Q I well summarize. Did the Solicitor explain

1 to the Court he was surprised to hear you say in
2 your direct testimony that you had been forced or
3 coerced because that was information that should
4 have come out during the Jackson versus Deno
5 hearing and since it didn't, he had to talk to his
6 investigator about it to see if he needed to reply?

7 A Right.

8 Q Now, did you know prior to the Solicitor
9 saying that, that that was information that should
10 have come out in the Jackson versus Deno hearing?

11 A No, ma'am.

12 Q Now, if you can, look at page 612 through
13 613, at Judge Hayes' response.

14 A All right.

15 Q Does the judge inform Mr. Colvin he doesn't
16 see a need for any action on his part but warns all
17 the parties that they should not talk to witnesses
18 when there is a sequestration order in place?

19 A Yes, ma'am.

20 Q Even a reply witness?

21 A Correct.

22 Q Now, if you could, look at page 613, lines 15
23 through 19. That answer was not sufficient for Mr.
24 Colvin, was it?

25 A No, ma'am.

1 Q He specifically told the judge he wanted to
2 know whether it is right or wrong and he wanted a
3 ruling on it. Is that correct?

4 A Yes, ma'am.

5 Q Now, the judge gives his ruling, if you could
6 turn to page 615, lines 16 through 25, page 615,
7 lines 16 to 25, and there does the judge warn all
8 parties they need to run it by him before talking
9 to a witness and gives out pretty much the same
10 warning he did before?

11 A Right.

12 Q Now, were you concerned, when you knew all
13 this was going on, about what is going on in the
14 hallway during the trial and witnesses being talked
15 to and that type things?

16 A Well, I didn't understand why he did it in
17 chambers instead of doing it like this from the
18 beginning. My lawyer hadn't told me nothing about
19 anything like that.

20 Q Thanks to Mr. Colvin this is in the record of
21 your case?

22 A Right. I feel they were trying to hide it
23 from me.

24 Q And your attorney did not bring this up on
25 the record?

1 A No, ma'am.

2 Q If you would, look at page 617, lines 4
3 through 9. Judge Hayes specifically asked your
4 attorney about it. Is that correct?

5 A Yes, ma'am.

6 Q And what was your attorney's response?

7 A He said he has no concern about it.

8 Q Your attorney had no concerns or argument
9 about putting this on the record in your behalf?

10 A No, ma'am.

11 Q If you could, turn to page 654, please.

12 A All right.

13 Q Did your attorney make a directed verdict
14 motion?

15 A Yes, insufficient evidence.

16 Q Did he make any specific argument on your
17 behalf?

18 A No, ma'am.

19 Q If you could, please turn to his closing
20 argument, specifically page 670.

21 A All right. What line?

22 Q If you could, look at lines 1 through 4 and 7
23 to 22. Did your attorney there speak about Muslims
24 and the situation in the Middle East?

25 A Yes, ma'am.

1 Q Did it have anything to do with your case?

2 A No.

3 Q Okay. Now, are you alleging today pursuant
4 to, we reviewed a number of pages together I will
5 provide to the Court, that your attorney actually
6 had a damaging closing argument on your behalf?

7 A Yes.

8 Q Okay. I want to point out a number of other
9 things that you have actually brought to my
10 attention. If you could, look at page 671. If you
11 could, just review that page, please.

12 In reading that, do you feel that your
13 attorney was somewhat mocking your story?

14 A Yes, ma'am.

15 Q Do you feel he mischaracterized what you were
16 trying to convey to the jury?

17 A Yes.

18 Q If you could, look at page 686, lines 3
19 through 9. Why don't you just read those in the
20 record and I will ask you about it.

21 A Read it outloud?

22 Q Yes.

23 A It says, "You see how many people are in the
24 court --"

25 Q If you could, speak very clearly.

1 A Slow down?

2 THE COURT: If you want to, Miss Blanchette,
3 if you want to read it I will be glad for you to do
4 so. I have it in front of me and I'm reading it.

5 Q Okay. Did he indicate there that if you had
6 in fact taped up your girlfriend you were stupid?

7 A Yes, ma'am.

8 Q Okay. And were you shocked to hear that come
9 out of his mouth?

10 A Yes.

11 Q And regarding the fact he pointed out in his
12 closing argument, he said that if for one second
13 she thought she was kidnapped, she was being
14 kidnapped --

15 A Right.

16 Q -- did he explain that to you that way?

17 A No, ma'am.

18 Q And he also said the true question, at the
19 end of his closing argument, on page 696, is
20 whether you intended to kidnap her?

21 A Yes, he said that.

22 Q But the judge explained to him the standard
23 was not intent, it was knowledge?

24 A Right.

25 Q Now, if you can look at the State's closing

1 argument, if you look at page 703, line 3, how did
2 the State characterize your defense attorney's
3 choosing argument?

4 A Rambling thought.

5 Q And if you could look at page 700, lines two
6 through 24, does the State argue that you had
7 admitted the crime?

8 A Yes, ma'am.

9 Q And you understand that argument was derived
10 from what you had said on the stand?

11 A Right.

12 THE COURT: Miss Blanchette, where was that,
13 again, please, ma'am?

14 MS. BLANCHETTE: I have it marked as page
15 700, lines 2 through 24. And specifically I
16 believe it's on line 20, Your Honor.

17 A If you could, look at page 703, lines 7
18 through 23, and if you could, pay special attention
19 to lines 21 through 23.

20 A All right.

21 Q Does the State argue without objection that
22 the victim was also subjected to criminal domestic
23 violence?

24 A Yes, ma'am.

25 Q Were you being charged with criminal domestic

1 violence?

2 A No, ma'am.

3 Q And finally, if you could look at pages 710
4 through 711. Does the State essentially ask the
5 jury to consider the case from the victim's
6 perspective and to end this one year nightmare for
7 her?

8 A Yes, ma'am.

9 Q Did your attorney object to that statement
10 pursuant to Brown versus State or any other case
11 that says you cannot ask the jury to step into the
12 place of the victim?

13 A No, ma'am.

14 THE COURT: What page is that, again, please.
15 ma'am?

16 MS. BLANCHETTE: 710 through 711.

17 Q Now, if you could, turn to the Court's charge
18 on page 721, please. Does the judge again explain
19 that the kidnapping only requires knowing or
20 knowledge?

21 A Yes, ma'am.

22 Q And then again in his charge later on he says
23 it requires knowing, but was that something your
24 attorney conveyed to you, Mr. Parker?

25 A No, ma'am.

1 Q Now let's look at when the jury was sent out.
2 They were sent out on page 731. If you look at
3 lines 1 through 4, did they have a long
4 deliberation in your case?

5 A No. I think it was like 45 minutes.

6 Q Okay.

7 A 35, something like that.

8 Q If you could, look down page 731, at lines 8
9 through 16. Was it put on the record that the
10 extra juror went in and joined in the discussions
11 with the jury?

12 A Yes, ma'am.

13 Q And if you could, look at page 733, lines 2
14 through 5. Does the foreperson actually explain
15 that the juror did in fact discuss one of the
16 charges?

17 A Right. The extra juror said he never did but
18 the foreperson --

19 Q There was conflicting testimony there, or
20 information?

21 A Right.

22 Q Now, did your attorney make a motion for
23 mistrial?

24 A No, ma'am.

25 Q Now, you were found guilty of the kidnapping

1 charge, is that correct?

2 A Yes, ma'am.

3 Q And did you understand that your attorney was
4 going to be allowed or other people were going to
5 be allowed to speak on your behalf for a lighter
6 sentence?

7 A No. The judge asked me directly, nobody else
8 said anything about it.

9 Q But your attorney spoke on your behalf, is
10 that correct?

11 A Right.

12 Q If you could, look at page 738, lines 4
13 through 6. Did your attorney state, "If it was me
14 I would rather have my hands and feet duct taped
15 than driven to Summerville"?

16 A Yes, ma'am, and the Court cut him off.

17 Q Okay. If you look on page 738, the judge
18 stopped him right there?

19 A Correct.

20 Q Did you feel those comments in mitigation
21 were in any way helpful to the sentence you
22 received?

23 A No, ma'am.

24 Q Now, we mentioned briefly before that
25 Appellate Defense handled your direct appeal, is

1 that correct?

2 A Yes.

3 Q And Miss Hudgins argued the trial court erred
4 by placing you on the sex registry?

5 A Right.

6 Q And erred by failing to charge the jury the
7 lesser included of false imprisonment?

8 A Right.

9 Q Did she point out your attorney did not ask
10 for that charge?

11 A Correct.

12 Q And your appeal was dismissed and your
13 conviction was upheld, is that correct?

14 A Yes, that it had no merit.

15 Q Mr. Parker, we have been meeting for several
16 years on this case. I know there are a number of
17 cases that you would like me to provide to the
18 Court in support of your allegations.

19 A Right.

20 Q But is there anything I failed to ask you
21 about that you would like to inform the Court of
22 since this is your one day in court?

23 A I feel you pretty much covered everything. I
24 just felt like the whole trial was like staged, it
25 really, it wasn't based on what really happened,

1 everything was already like determined before I
2 ever went to court.

3 Q Now, Mr. Parker, I have some questions for
4 you about the PCR process and your allegations
5 today, but what is the relief you're asking this
6 Court for?

7 A I mean, I would like a new trial or a time
8 served, either, or --

9 Q Do you understand that the only thing you can
10 ask the Court for is a new trial?

11 A Yes, ma'am.

12 Q And do you also understand from our meetings,
13 that by asking the Court for a new trial you're
14 asking him to set aside your conviction on the
15 kidnapping charge?

16 A Right.

17 Q And by setting aside your conviction on the
18 kidnapping charge and granting you a new trial you
19 would still face that indictment just as you had at
20 the very beginning of this process?

21 A Right.

22 Q And you understand when you have to go back
23 and face that kidnapping indictment there is no
24 guarantee of less time or time cut, like I just
25 said?

1 Q That was audiotaped and videotaped, is that
2 right?

3 A Right.

4 Q And he gave you your Miranda warnings on tape
5 and you did see that on tape, right?

6 A Right.

7 Q All right. Now, you testified at trial at
8 one point that you felt coerced. Is that correct?

9 A Yes, ma'am.

10 Q And but then again after that you testified
11 that you were not forced to give a statement and
12 you made your own decision to give a statement. Is
13 that correct?

14 A Yes, but the --

15 Q And on page 454 didn't you also testify the
16 reason you were testifying is because you wanted to
17 get the truth out and that is why you didn't plead
18 guilty?

19 A Yes, ma'am.

20 Q All right. Now, you mentioned DNA that was
21 found in the truck, you said something about animal
22 hair. Isn't it true that is not the conclusion
23 they made, they said there was insufficient
24 evidence to conclude it was human DNA? In other
25 words, there was no roots on the hair?

1 A They said it was not human hair, that is what
2 it said on the papers.

3 Q They did not conclude it was human hair, is
4 that right?

5 A Yes.

6 Q Now, you mentioned that you thought the
7 Solicitor might be coaching the victim or she was
8 reading from a script. You don't actually know
9 what she was looking at, isn't that correct, she
10 could have been reading a magazine?

11 A It wasn't a magazine because I seen the lines
12 on the paper. It was a white paper, a tablet she
13 was looking at.

14 Q It could have been something wholly unrelated
15 to the case?

16 A Yes, you're right.

17 Q There was one point you were talking about
18 the victim was talking about a prior episode where
19 you were choking her. Now, isn't it true that the
20 Solicitor actually cut her off right there?

21 A Yes, but they kept talking about it further
22 on.

23 Q All right.

24 MS. CATOE: Beg the Court's indulgence one
25 moment.

1 THE COURT: Yes, ma'am.

2 Q Your attorney was talking to you about how
3 you testified that you knew you did something
4 wrong, that you didn't have an intent. Isn't it
5 true that you also testified that you didn't
6 realize what you were doing at the time and you
7 didn't realize it was wrong at the time?

8 A Correct.

9 Q All right. Are you aware of case law, we
10 talked about the lesser included offense of false
11 imprisonment, are you aware of case law indicating
12 that false imprisonment is not a lesser included
13 offense of kidnapping?

14 A False imprisonment is the only lesser
15 included offense of kidnapping, there could be no
16 other.

17 Q So you're not aware of the case of State
18 versus Benson, 295 SC 52, a 1988 case stating the
19 opposite of what you're claiming?

20 A No, ma'am.

21 Q All right. Your attorney was talking with
22 you about when Attorney Colvin, your grandmother's
23 attorney, made a request for the Court to rule on
24 whether the Solicitor should have been talking to
25 Officer Hayward. Do you recall that?

1 A Yes.

2 Q The State explained they were trying to
3 determine whether they would be called as a reply
4 witness because they were surprised by some
5 testimony that came up, and in fact Officer Hayward
6 was not ultimately called as a reply witness. Is
7 that correct?

8 A No, but that was because it involved the
9 things they stired up, so they didn't bring him up.
10 That is just my opinion.

11 Q Now, you testified at trial, regardless of
12 whether your attorney told you about the mental
13 state of kidnapping, is that correct?

14 A I could have made a better decision whether I
15 would testify or not. I would have had better
16 knowledge whatever I stepped into before I got
17 there.

18 Q Did you say on page 454 that you were
19 testifying because you wanted to get the truth out,
20 that is why you didn't plead guilty?

21 A Yes.

22 Q All right. And you talked about the
23 alternate juror got sent into the jury room about
24 five minutes. Do you recall that?

25 A Yes.

1 Q The alternate juror said he did not discuss
2 the kidnapping charge and the foreman agreed with
3 him that he did not discuss the kidnapping charge.
4 Is that correct?

5 A He didn't say kidnapping, did he? He said he
6 didn't discuss the first charge but he discussed
7 the second charge.

8 Q The first charge being the kidnapping?

9 A Right.

10 Q All right. Now, you're relying on the case
11 of Cronic, which your attorney just discussed
12 briefly with you, but you were acquitted of
13 burglary first, which carried a life sentence. Is
14 that correct?

15 A Yes.

16 MS. CATOE: I have nothing further.

17 THE COURT: Any redirect?

18 MS. BLANCHETTE: Very briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. BLANCHETTE:

21 Q The State asked you about the lesser included
22 of false imprisonment. You're relying on the
23 argument your appellate defender made in that
24 regard, is that correct?

25 A Yes, ma'a.

1 Q Are you also alleging today your appellate
2 defender should have raised other meritorious --

3 MS. CATOE: Objection, Your Honor. This was
4 not raised on cross-examination.

5 THE COURT: Hold on one second. What do you
6 say to that, Miss Blanchette?

7 MS. BLANCHETTE: Your Honor, I can rephrase
8 my question.

9 THE COURT: All right, thank you, ma'am.
10 BY MS. BLANCHETTE:

11 Q Mr. Parker, if it is in fact true that is not
12 a lesser included, you have alleged in your
13 application that your appellate attorney was
14 ineffective for not raising meritorious issues in
15 your appeal. Is that correct?

16 A Yes, ma'am.

17 MS. BLANCHETTE: Your Honor, I have no
18 further questions.

19 THE COURT: All right.

20 You may step down, sir.

21 (Witness excused).

22 THE COURT: Further witnesses on behalf of
23 the applicant?

24 MS. BLANCHETTE: Your Honor, we have no
25 further witnesses. I have a number of cases I have

1 already alluded to I would like to provide to the
2 Court with just a brief explanation but I can wait
3 until the Attorney General has finished.

4 THE COURT: I think you need to wait until
5 the conclusion.

6 I have a question on the last issue raised
7 about ineffective assistance of appellate counsel.
8 I'm not sure I understand your argument there. Is
9 your argument that they included in the brief an
10 argument that isn't the law of the State of South
11 Carolina and the defendant couldn't have been
12 granted relief on that anyway but they are
13 ineffective for raising a ground that he can't be
14 granted relief on?

15 MS. BLANCHETTE: Yes, Your Honor, and I base
16 this argument upon Bennett versus State and there
17 an appellate defender was found ineffective. It
18 addresses whether or not an appellate defender
19 could be ineffective in filing an Anders brief.
20 Based upon the State's questioning we would feel it
21 is the State's position that is not a meritorious
22 issue or invalid issue, that is ineffective in that
23 regard. But there are also several other issues as
24 I believe the State will point out with Mr. Goude's
25 testimony, of objections he made and motions he

1 made that his appellate defender failed to present
2 to the Court on direct appeal.

3 THE COURT: All right, thank you, ma'am.

4 MS. BLANCHETTE: Thank you, Your Honor.

5 THE COURT: All right. We'll take a break
6 for about five minutes and then we'll resume.
7 Thank you very much.

8 (Recessed at 11:24 a.m.).

9 (Reconvened at 11:31 a.m.).

10 THE COURT: All right, Miss Catoe,
11 presentation on behalf of the State, please, ma'am.

12 MS. CATOE: Yes, Your Honor. The State would
13 call Reuben Goude to the stand.

14 THE COURT: All right, please come around and
15 be sworn, sir.

16 REUBEN GOUDE,
17 after being first duly sworn, testified as follows:

18 THE CLERK: Would you please state your name
19 for the record.

20 THE WITNESS: Reuben Goude.

21 THE CLERK: You may have a seat.

22 THE COURT: All right, Miss Catoe, you may
23 proceed, ma'am.

24 MS. CATOE: May it please the Court.

25 DIRECT EXAMINATION

1 BY MS. CATOE:

2 Q Mr. Goude, first just tell us how long you
3 have been practicing criminal law.

4 A 31 years.

5 Q All right.

6 THE COURT: Can you move the microphone in a
7 lot closer, and Mr. Goude closer to the microphone?

8 A 31 years.

9 Q All right. And how did you become involved
10 in this case?

11 A I was appointed in March, 2006.

12 Q All right. And do you recall how Mr. Parker
13 came to be arrested on these charges?

14 A He has testified that he turned himself in
15 and that there were arrest warrants out on him for
16 kidnapping and/or burglary.

17 Q Can you give us an overview of the actual
18 facts of the alleged crime?

19 A Well, this was, I thought from the beginning
20 and I still think now, one of the silliest and most
21 ridiculous, stupidest, dumbest cases I have ever
22 been involved in from both sides, the prosecutor
23 and the defense. He and the girl had lived
24 together for years and had sex numerous times, used
25 drugs together, dranked together, she didn't work,

1 she lived with him and his parents or grandparents
2 and didn't pay any bills other than her food stamps
3 she contributed for them to have something to eat
4 in the house with the grandparents and his mother,
5 my client's mother. They also lived in her mama's
6 trailer that her mama paid all the bills for and
7 the lot rent and trailer and utilities. They lived
8 in another trailer in Ladson where my client worked
9 as a diesel mechanic, had for years, and they had
10 stayed together until about twelve days, I think,
11 looking back over these notes in the last day or
12 so, before this alleged incident around Sunday, one
13 day in January, as I recall, of 2006. So, it was
14 really a disgusting case to end up having to get a
15 25 year sentence on for kidnapping a woman that he
16 had lived with for years.

17 But anyway, she charged him, she arrested
18 him, or the police did, he turned himself in and we
19 went through all the mess that you have heard the
20 defendant and his witnesses talk about here today.

21 Q And what do you mean by that?

22 A Ask me a little more specific.

23 Q Sure. Did you meet with Mr. Parker to
24 discuss the charges?

25 A Yes. We got appointed in March, 2006, we

1 filed our normal discovery and bond reduction
2 motions right away in March or early April of 2006,
3 and in April we sent a bond reduction letter to the
4 Solicitor asking him to bring Mr. Parker to court
5 so he could get a bond setting or a bond reduction.

6 We talked with Mr. Parker in May, 2006. He
7 said to me essentially what he said this morning,
8 what is in that humongous transcript, that the girl
9 had came back to Georgetown from Summerville where
10 she was living with my client and his grandparents
11 and mother, came back to the little trailer here in
12 the Highway 17-A section, between here and Andrews,
13 and that they had talked with each other that
14 Sunday morning and Mr. Parker and his grandma drove
15 from the Summerville area to a little trailer park
16 here in the Lumber Town section out on 17-A in
17 Georgetown to pick her up after talking with her on
18 the phone. Mr. Parker said she had some of her
19 personal clothes still at his house, which he
20 testified to in trial, and he had talked with her
21 about she wanted to get them and she was high on
22 dope when he talked with her, cocaine, and she said
23 she wasn't able to come get them right then and he
24 didn't know exactly where her clothes were or what
25 was in the house, as he had a grandma, had a

1 brother's girlfriend in the house, which was her's
2 and which was somebody else's, so he and his
3 grandma drove down here to get her to take her back
4 to his house in Summerville so she could get her
5 clothes and move her right back down here, like
6 they had moved two or three or four times already
7 in the last year or so, it wasn't nothing unusual.

8 They get to the trailer, she tells him on the
9 phone, my client says, that the door would be
10 unlocked. He says he got to the door, it was
11 unlocked, he went in, she is high on dope, on the
12 couch in the living room, seems like a marijuana
13 cigarette was in the ashtray and a white powder
14 cocaine was on her nose, and he felt sorry for her.

15 She had told him, he told me and he had in
16 his statement, that is one reason we were not sad
17 it came in, his confession, or his statement, I
18 didn't really consider it a confession, on the
19 statement he made to the police that was brought in
20 at trial, that she had had, been abused in the past
21 years by people, when she would be sleeping or
22 passed out or drunk or something they had messed
23 with her, fondled her body when she didn't know
24 what was going on.

25 He felt sorry for her laying there passed out

1 on dope and/or alcohol in her little trailer with
2 the door unlocked, with other trailers all around
3 it, and so he was going to take her with him back
4 to Summerville because he still loved her and so
5 she wouldn't get hurt or abused living there in the
6 trailer by herself, passed out. So her legs would
7 fall all over the place, he was going to have to
8 carry her, started to tape up her ankles and said
9 to himself, "This is stupid, me taping up a girl's
10 ankles," and he untaped her ankles with the duct
11 tape that was there in her living room and helped
12 her up and she said, "I'm out of it," and he said,
13 "You need to come get your clothes."

14 He helped her put a comforter or something
15 around her, helped her get out of the trailer, get
16 into the pickup. His old grandma, like they
17 testified today, drove back to Summerville and
18 seemed like they stopped at a gas station or
19 something, which all this is in his confession.

20 So, all this, to me, is showing that if she
21 was being kidnapped, he gets out at the station and
22 pumps gas and the grandma is there, if I'm a
23 healthy young 20 something year old woman and I am
24 being kidnapped, being raped, murdered, robbed and
25 abused I am probably going to jump out of the

1 vehicle and run in the convenience store and say I
2 am being raped, robbed, kidnapped and murdered,
3 call the police, help me. But anyway, she didn't,
4 she sat there in the truck.

5 And then the grandma speaks, supposedly my
6 client and his girlfriend are arguing in the back
7 of the truck and the grandma is driving them back
8 to Summerville and the grandma gets tired of
9 hearing them arguing or talking, whatever they are
10 saying, she says, "If you all don't shut up I'm
11 going to take you to the police," and the point of
12 that, not that we were an idiot by putting that in
13 evidence, but to show that if you're kidnapping
14 somebody and the victim, the girl is being
15 kidnapped and the driver of the car says, "I am
16 going to take you to the police station," where
17 they, believe it or not, have police that have guns
18 and stuff, they can arrest me, the grandma and my
19 evil grandson that is kidnapping you, if I had been
20 kidnapped I would have said something about, "Oh,
21 please take us to the police like you're
22 threatening to do, grandma, so I can report that I
23 am being kidnapped to be murdered or raped or
24 robbed and stolen and beat up."

25 But anyway, the confession, as I remember,

1 and the testimony was she said, "No, don't take us
2 to the police, we will shut up." So then they go
3 on to the grandma's house and they get her clothes
4 and stuff together and bag it up in garbage bags
5 and things, put it in the little truck and they get
6 in the bed in the house where the grandma is and
7 the mama is, all of them not hearing the girl
8 screaming rape, help, murder, robbery, and they got
9 a telephone there in the house, in the grandma's
10 house, which the grandma and the mama, as I recall,
11 I didn't read that 700 page transcript again before
12 I come in here but it seems like they testified
13 they had a telephone in that house and the girl
14 said the same thing, the alleged victim, so while
15 they laid there in the house in the bed, my client
16 and the girlfriend together, it seems like she got
17 up to go to the bathroom or the kitchen or
18 something, I would think that it would be a point
19 we could raise that that is in his confession or
20 admission or statement to the police or whatever it
21 was, along with his grandma and mama's testimony,
22 we could tell that to the jury in a trial about
23 being kidnapped and if I was in the house and there
24 was a phone there and grandma and mama are not
25 trying to kidnap me and tie me up, beat me or shoot

1 me or cut me with a knife, I probably pick up the
2 phone and say help, I'm being kidnapped.

3 Q All right. Is it fair to say you wanted the
4 defendant's statement to come into evidence?

5 A Well, we did, looking at my trial summary
6 here, we did a motion to suppress the confession.
7 However, as you all brought out on earlier
8 testimony on the statement, and I made, seems like
9 about seven pages of notes when I listened to the
10 confession before we ever went to court.

11 MS. BLANCHETTE: Your Honor, may I have an
12 objection at this time?

13 THE COURT: And what would that be, ma'am?

14 MS. BLANCHETTE: Your Honor, during 2010 I
15 requested a copy of Mr. Goude's file. I was
16 contacted by his office on June 8, 2010, and told
17 the file had been destroyed in a fire. It appears
18 he's referring to that file. I had no notice there
19 was actually a file in this case before he began
20 referring to it on the stand today.

21 THE COURT: All right. So you're asking for
22 a continuance to let you examine the content of the
23 file?

24 MS. BLANCHETTE: Your Honor, I'm entering an
25 objection to make the Court aware I have not been

1 provided --

2 THE COURT: I appreciate that, ma'am, so I'm
3 offering you some relief. I will be glad to grant
4 you a continuance so that you can examine the total
5 and complete content of the file and bring any
6 matters you want to the Court's attention.

7 MS. BLANCHETTE: Your Honor, may I discuss
8 that briefly with my client?

9 THE COURT: Certainly.

10 MS. BLANCHETTE: Thank you.

11 (Brief recess).

12 MS. BLANCHETTE: Your Honor, I discussed the
13 matter briefly with my client. I would like to
14 continue. We would like to reserve the right to
15 object if the State does plan to introduce it.

16 THE COURT: All right.

17 MS. CATOE: May I confer with opposing
18 Counsel, Your Honor, just briefly?

19 THE COURT: Yes.

20 MS. CATOE: Thank you.

21 (Conference between counsel).

22 THE COURT: Anything else you all want to put
23 on the record?

24 MS. BLANCHETTE: No, Your Honor. I just
25 wanted to put that on the record.

1 THE COURT: Before we go on with this issue,
2 Mr. Goude, could you tell me, do you have a file
3 that you generated in representing Mr. Parker?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay. And you have got in there
6 your notes of interviews and trial notes, and
7 whatever work that you did on behalf of Mr. Parker
8 is contained in that file, is that correct, sir?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: All right, very good.

11 All right, Mr. Parker, where we are right now
12 is your attorney has raised a matter to me and has
13 explained that apparently, and however it came
14 about doesn't matter at this point in time, Mr.
15 Goude has a file regarding the work that he
16 generated during his representation of you.
17 Apparently your counsel has not had an opportunity
18 to examine the content of the file, to look at the
19 notes and see about the conversations that he might
20 have had with you, his notes he took during the
21 trial and his intentions of what he intended to do
22 or didn't intend to do, that could help your
23 argument here today. There might be information.
24 I don't know what is in the file, I haven't looked
25 at it, so all I'm telling you is there may be and

1 there could very well be important information in
2 that file that could assist you in the presentation
3 of your post conviction relief application or at
4 least help your attorney in making decisions as to
5 what issues are feasible or not feasible to bring
6 to the Court's attention in this matter and might
7 better, she might be able to better focus her
8 arguments as to what to argue to the Court about
9 what was done or not done in this case.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Now, I'm giving you
13 an opportunity and I'm giving your counsel an
14 opportunity to continue this case to another day
15 and for you to examine the total and complete
16 content of the file, have all the time that you
17 want to examine the content of the file, discuss
18 that with your attorney and make any decisions you
19 want to regarding the content of that file.

20 Now, before I ask you whether or not you want
21 to have that opportunity do you want to discuss
22 this matter further with your attorney?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very good. Go ahead and do so.

25 MS. BLANCHETTE: Your Honor, may I ask you

1 one question?

2 THE COURT: Yes, ma'am.

3 MS. BLANCHETTE: In continuing case would the
4 matters that have already been put on the record be
5 preserved and the record would just remain open
6 until the next term of court?

7 THE COURT: Will, the matters that have been
8 testified to are part of an official court record,
9 you can ask for a transcript. Now, are you asking
10 me am I going to retain jurisdiction of this
11 matter? No, ma'am, I'm not going to retain
12 jurisdiction of the matter, it will come up in its
13 regular course whenever it comes up again. As I
14 understand it, the next term of court is in
15 November, Judge Larry Hyman, Circuit Judge, is
16 holding that particular term. I assume it would
17 come up in front of Judge Hyman at that time.
18 Obviously between now and November you will have
19 plenty of time to request and get a copy of the
20 transcript of these proceedings from the court
21 reporter.

22 Miss Catoe, would you have an objection to
23 the matters being presented at that time, and this
24 is not prohibiting you, Miss Blanchette, from
25 calling those witnesses again if you want to, but

1 if you decided not to do that you could use the
2 transcript of the proceedings rather than calling
3 them again.

4 All right, do you have an objection to that,
5 Miss Catoe?

6 MS. CATOE: I guess the State would like to
7 proceed from this point forward and not rehash.

8 THE COURT: I appreciate that, but we're not
9 proceeding until we resolve this issue about the
10 file. Now, if Mr. Parker wants to waive looking at
11 that file, waive any objections he might have to
12 it, waive any issues he might have to it, waive any
13 problems that might cause to him, if he wants to
14 waive all that and give all that up and proceed,
15 then we'll proceed on, understanding he has waived
16 all those issues and waived them, given them up and
17 he can't make those arguments to the Court in any
18 way, he is giving them up. Now, if he wants to do
19 that, that's fine. Otherwise this matter is going
20 to stop, the Court is going to order the State and
21 Mr. Goude to, before we leave here today, make a
22 complete copy of that file and turn it over to Miss
23 Blanchette before she leaves today so that she can
24 give a copy of it to Mr. Parker and he can review
25 it at his leisure before the matter comes up again.

1 in November, if indeed it comes up again in
2 November. Again, the Court doesn't control the
3 docket. The docket is controlled by the Clerk of
4 Court and the Attorney General. I'm assuming it
5 will come up in November but it might very well be
6 next year. We usually have a PCR term in February
7 every year in this circuit, so I'm assuming it
8 would come up then, I don't know that it would.

9 But that is where we are, all right? So,
10 there appears to be some disagreement so we won't
11 do that. So it appears, I guess in response to
12 your question, Miss Blanchette, that you will have
13 to, again, bring all these matters back to the
14 attention of the trial court at the time it comes
15 back for PCR.

16 MS. BLANCHETTE: Can I just have one moment
17 to discuss it?

18 THE COURT: I think you all need to discuss
19 it, yes, ma'am.

20 MS. CATOE: Can I make a remark, Your Honor?

21 THE COURT: In just a second I will ask you.

22 MS. CATOE: Yes, sir.

23 MS. BLANCHETTE: Your Honor, since my client
24 only has one bite at the apple, I think we need to
25 make sure he has a full bite and I feel that I

1 would not be doing him proper representation if I
2 waived all those things.

3 THE COURT: I agree with you, I agree with
4 you. Anyway, yes, ma'am, Miss Catoe, you wanted to
5 say something.

6 MS. CATOE: Yes, Your Honor. I was just
7 hoping we could clarify how the next proceeding
8 would go.

9 THE COURT: It will be a brand new proceeding
10 because it might very well be, based upon the
11 content of the file that will be turned over today
12 to Miss Blanchette, she decides, "I better ask some
13 different questions of my witnesses, I better bring
14 some other points out to the trial judge that I
15 didn't in this one," so that she's not bound by the
16 questions and answers. Now, all these questions
17 and answers have been given under oath, okay, so
18 certainly they are available to the State and the
19 defense to use in that regard maybe to test
20 somebody's credibility or believability, "Didn't
21 you say under oath, you know, in these proceedings,
22 A, and now today you said B?" So, certainly it's
23 available in that regard.

24 MS. CATOE: Yes, Your Honor.

25 THE COURT: We're not bound by that, they

1 certainly can add to it or proceed how they want to
2 in the future.

3 MS. CATOE: So, she would have the
4 opportunity to incorporate this record if she chose
5 to?

6 THE COURT: If she chose to do so. If she
7 chooses to do so but she's not bound by it because,
8 again, I don't know what is in that file but it
9 might very well cause the applicant to bring other
10 points to the Court. They might amend their post
11 conviction relief application, they might find
12 something in the file, "Now we got to add this
13 ground because of what we found in the file." I
14 don't know. That's the point. You don't know
15 until you look at the file, so that is where we
16 are.

17 MS. CATOE: Thank you, Your Honor.

18 THE COURT: All right. The Court was ready,
19 willing and able to proceed in this matter but I
20 agree with Miss Blanchette that to do a proper job
21 for her client she needs to examine the contents of
22 the file generated by Mr. Goude in his
23 representation of Mr. Parker, so this matter is
24 continued to the next available term of court for a
25 full and complete hearing.

1 Mr. Goude and Miss Catoe, you will, I hope
2 with maybe assistance of the clerk's office or Mr.
3 Goude's office you will make a complete copy of the
4 file today and turn it over to Miss Blanchette
5 today so that she has it and then she can make
6 whatever copies she wants to get a copy on to Mr.
7 Parker, but before you all leave here today we're
8 going to transfer that file or copy the file over
9 to the applicant's attorney. All right?

10 Thank you very much.

11 MS. BLANCHETTE: Thank you, Your Honor.

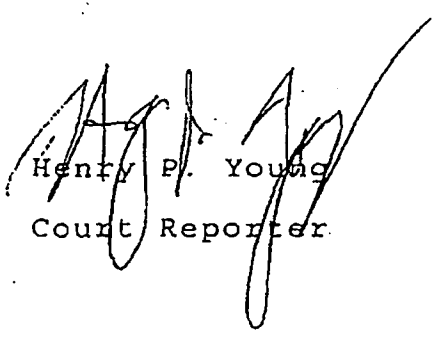
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I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Georgetown County, South Carolina, on the 24th day of August, 2011.

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

September 28, 2011



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
2011-CP-26-05020

Nicholas Parker,

vs.

State of South Carolina.

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TRANSCRIPT OF RECORD

January 23, 2012
CONWAY, SOUTH CAROLINA

BEFORE:

The Honorable, George C. James, Jr.

APPEARANCES:

BY: Christina J. Catoe, Esq.
Attorney for State of South Carolina

BY: Tricia C. Blanchette, Esq.
Attorney for Nicholas Parker

Brenda R. Babb
Circuit Court Reporter

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Call of Case

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1 Ms. Blanchette: Do you want me to wait for my
2 client?

3 The Court: Oh, he's not in here?

4 Ms. Blanchette: He's not here yet.

5 The Court: We'll wait on him.

6 Ms. Blanchette: Here he is, okay.

7 The Court: All right, yes, ma'am?

8 Ms. Blanchette: Yes, Your Honor, do you want me
9 to go through the procedure of history or just to our
10 allegations for you?

11 The Court: Just tell me a little bit about it
12 all, what you're going to try to establish today.

13 Ms. Blanchette: Yes, I'd be happy to, I'm here
14 today on behalf of Nicholas Parker. He was tried back on
15 January 29th through February 2nd, 2007, here in
16 Georgetown, and he was represented by Reuben Goude. He
17 filed the instant application and from that we did two
18 detailed amendments; does Your Honor have a copy of those
19 or would you like me to read through those at this time?

20 The Court: I do, I have them.

21 Ms. Blanchette: Okay, and we actually had an
22 evidentiary hearing in this matter on August 24th, 2011,
23 that was continued by the Honorable Steven H. John, and it
24 was continued to this date. There is a portion of that

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1 transcript I'm going to introduce to the Court instead of
2 recalling three witnesses today.

3 The Court: So is this something that is
4 appropriately in front of me or is he still the hearing
5 Judge?

6 Ms. Blanchette: He made it very clear when he
7 continued that case that he would not retain jurisdiction,
8 that it should be scheduled in the next term that was
9 available for PCR.

10 The Court: So I'm to judge those witnesses
11 credibility based on simply what I read?

12 Ms. Blanchette: Yes, we did direct and cross
13 examination; I talked with the State about it. I believe
14 she's in agreement that we just defer to the transcript
15 instead of recalling those three witnesses today.

16 The Court: All right, how long is that
17 transcript?

18 Ms. Blanchette: The entire transcript is a
19 hundred and six pages. I just pulled the pertinent
20 portions of the testimony which is approximately ten pages.

21 The Court: Okay, all right, what's, what's this
22 about?

23 Ms. Blanchette: This was a case involving a
24 burglary first and a kidnaping. The alleged victim was his
25 girlfriend. They were going through some relationship

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6

1 issues, for lack of better words. She alleged that he came
2 and kidnaped her and brought her back to his grandmother's
3 house. It was his position at trial, and I believe is
4 today, that he went and picked her up so she could get all
5 her belongings that were still at his grandmother's house
6 because they were parting ways and it was completely
7 voluntary on her part. There was no kidnaping.

8 The jury did find him not guilty of burglary
9 first but they did find him guilty of kidnaping. Major
10 factors that we're going to focus on today, and you'll see
11 in the issues listed in the amendment, are the preparation
12 investigation that took place prior to trial, the failure
13 to call witnesses and utilize my client effectively as a
14 witness, and then most importantly there's this element
15 that shows up throughout the entire case where the Judge,
16 Judge Hayes keeps reminding defense counsel that the
17 requirement for kidnaping is only knowledge, you do not
18 have to have intent, and he actually reminds defense
19 counsel that several times. We're going to have a number
20 of allegations today that revolve around that, that my
21 client didn't understand that it was just a mere
22 requirement of knowledge, not ---

23 The Court: Knowledge of what?

24 Ms. Blanchette: Knowledge that, the case that
25 I'll refer to is the Jefferies case, but actually the State

Call of Case

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1 v. Jefferies goes through the kidnaping statute and in
2 there it says that the mens res of knowledge is the
3 requirement under kidnaping. Just one second here, it also
4 goes into the fact that kidnaping is a continuous offense
5 as long as the kidnaped person is deprived of his or her
6 freedom and believes that they are not free to leave.

7 The Court: Okay, knowledge on the part of the
8 victim.

9 Ms. Blanchette: Right, it's not his intent, did
10 he have criminal intent to kidnap her which when you have
11 the opportunity or if you already have reviewed the trial
12 transcript a lot of the focus is did you have the intent to
13 commit this crime and to kidnap her? A lot of his answers
14 are, no, I just was going to pick her up to do this. He
15 didn't understand the statute, the kidnaping statute, and
16 it would be my position throughout the trial it's apparent
17 that defense counsel may not have understood it either
18 because the Judge kept reminding him this is a knowledge
19 requirement not an intent requirement on the part of your,
20 of your client.

21 The Court: Was the conviction appealed?

22 Ms. Blanchette: He did do an appeal. It was
23 actually an Anders appeal in this case and there the only
24 issues raised were that the trial court erred by placing
25 him on the sex registry in connection with this kidnaping

Call of Case

8

1 charge and that the trial court erred by failing to give a
2 lesser charge on false imprisonment. Those were the only
3 issues raised on appeal.

4 One other issue that's going to come up is there
5 is a situation where his grandmother was also indicted, she
6 was a codefendant, and she had an attorney present, and he
7 brings a matter to the Court's attention regarding a
8 witness and the violation of the sequestration order, the
9 defense counsel doesn't even comment on, so I'll also go
10 into that which is in the transcript.

11 Unless the Court has any questions or would like
12 me to go over the specific amendments I'd be happy to call
13 my client?

14 The Court: All right, you can call him.

15 Ms. Blanchette: Okay, before I do that, Your
16 Honor, I did recall at the last hearing we put on the
17 record a amendment, and I would just like to that again,
18 pursuant to U.S. v. Cronic we're alleging today that
19 counsel failed to subject the State's case to a meaningful
20 adversarial testing which made the adversarial process in
21 this case presumptively unreliable. This is a case where
22 we're alleging that he was so ineffective that the
23 adversarial process itself failed.

24 The Court: All right, and what's the case law
25 that says false imprisonment is a lesser offense of

Call of Case

9

1 kidnaping?

2 Ms. Blanchette: Your Honor, they actually get
3 into that in the appeal and I think it's the State's
4 position ---

5 The Court: What was, what was the ruling on
6 that?

7 Ms. Blanchette: Let me refer to the appeal
8 exactly but that it's not proper, it is not a proper --

9 The Court: That's the Court's ruling?

10 Ms. Catoe: If I, if I may, Your Honor, the
11 Court just dismissed it under Anders so they don't actually
12 make any, any findings, they just dismissed the appeal.

13 The Court: Is there any legal authority for the
14 proposition that false imprisonment is a lesser offense of
15 kidnaping?

16 Ms. Catoe: No, Your Honor, in fact the
17 opposite. There's a case called Bertdsen and it's spelled
18 very funny but I think it's a 1989 case and it says false
19 imprisonment is not a lesser included offense of kidnaping.

20 The Court: So do you still want to go forward
21 on the ineffective assistance of counsel of not asking for
22 a lesser included charge?

23 Ms. Blanchette: Your Honor, I'd like to address
24 that with counsel but I do concede and I have done the
25 research that the State referred to that I would say

Call of Case

10

1 appellate counsel was ineffective for raising that as an
2 issue but it's an Anders brief so she was raising it, it's
3 a non meritorious issue.

4 The Court: Appellate counsel was ineffective
5 for raising it?

6 Ms. Blanchette: There's clearly case law that
7 says otherwise.

8 The Court: In South Carolina?

9 Ms. Blanchette: That is a South Carolina case.

10 Ms. Catoe: It is.

11 Ms. Blanchette: Yes.

12 The Court: Is there case law in South Carolina
13 that says it is a lesser offense?

14 Ms. Blanchette: She made a good argument but I
15 believe the case law says otherwise.

16 The Court: Okay.

17 Ms. Blanchette: But it is an Anders brief so
18 she wasn't raising it as a meritorious issue.

19 The Court: Okay, all right.

20 Ms. Blanchette: Your Honor, actually I would
21 call our first witness is going to be Kenneth Roland Ward.

22 Ms. Catoe: And, Your Honor, if you'd like I
23 have that case site; would you like that?

24 The Court: Yes, ma'am.

25 Ms. Catoe: It's 295 SC 52, it's a 1988 case,

Mr. Ward - Direct Examination by Ms. Blanchette

11

1 and while she's calling her witness may I step out and grab
2 Mr. Goude out of the back room there?

3 The Court: Yes, ma'am.

4 Ms. Catoe: Thank you.

5 The Court: What's the, what's the name of that
6 case again, please, ma'am?

7 Ms. Catoe: It's, looks like it's Bertdsen, b-e-
8 r-t-d-s-e-n, I believe, State v ---

9 The Court: V as in Victor.

10 Ms. Catoe: B, Your Honor, as in boy.

11 The Court: All right, you can go ahead and get
12 Mr. Goude.

13 Ms. Catoe: Thank you.

14 The Court: You can swear him in.

15 Kenneth Roland Ward, Sr.

16 being first duly sworn, testified as follows:

17 Madam Clerk: Please be seated and state your
18 name for the record.

19 The Witness: My name is Kenneth Roland Ward,
20 Sr.

21 The Court: Wait for Mr. Goude to come in.

22 Ms. Blanchette: Your Honor, I can hand up that
23 transcript portion at this time.

24 The Court: Okay.

25 Ms. Blanchette: And I apologize there are some

Mr. Ward - Direct Examination by Ms. Blanchette

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1 lines written through.

2 The Court: But this witness has not already
3 testified?

4 Ms. Blanchette: He's not, he has already
5 testified but it's not included in here.

6 The Court: He's testified in this PCR
7 proceeding?

8 Ms. Blanchette: At the last one he did.

9 The Court: So why is he testifying again if I'm
10 going to review the transcript?

11 Ms. Blanchette: I didn't include his testimony
12 in there, we're going to redo his testimony today.

13 The Court: All right, how do you spell your
14 last name again, sir?

15 The Witness: W-a-r-d.

16 The Court: Okay.

17 Direct Examination

18 By Ms. Blanchette:

19 Q Mr. Ward, how is that you know the
20 applicant Nicholas Parker?

21 A He's my nephew.

22 Q Okay, and with him being your nephew, your
23 blood relative, you're here today to tell the truth and
24 only the truth; is that correct?

25 A Yes, it is.

Mr. Ward - Direct Examination by Ms. Blanchette

13

1 Q Okay, now as far as this case that was
2 tried on January the 22nd through February 2nd, 2007, with
3 an incident dated January 29th, 2006, how were you
4 involved; what, what part of this case were you involved
5 in, if you could start at the beginning?

6 A Well they came and arrested my mother
7 because they could not find my nephew, incarcerated her in
8 Georgetown. Me and my older brother from Tennessee talked
9 my nephew into turning himself in and we brought him to
10 Georgetown for him to turn himself in after, it took us a
11 while to find him but that's where it started at.

12 Q And you were present with him when he
13 turned himself in?

14 A Yes, ma'am.

15 Q Okay, and where did he turn himself at?

16 A Georgetown Sheriff's Department.

17 Q And why is it that you were present with
18 him, does he not have a father or why would you be the
19 person to bring him in?

20 A He's like a son to me.

21 Q Okay, and when you brought him in that day
22 what was your, did you have a goal or a reason for bringing
23 him in?

24 A To get my mother out of jail.

25 Q Okay ---

Mr. Ward - Direct Examination by Ms. Blanchette

14

1 A Was the biggest, the deputy said that if
2 Nicholas turned himself in my mom would be, would be
3 released and the charges would be dropped from her, which
4 they weren't --

5 Q So -- oh, go ahead.

6 A That's why, that's why me and my brother
7 brought him and he turned himself in.

8 Q Okay, so your motivation was to help your
9 elderly mother ---

10 A Yes.

11 Q --- and to get him in safely. Once you all
12 arrived do you remember what happened, and please only tell
13 me about first hand information, not what you've been told
14 by somebody else?

15 A I went into the Sheriff's office and we sat
16 down and the deputy asked him what happened, and he went on
17 to tell that, you know, that he wasn't, that he didn't
18 kidnap her and that he was, you know, he was turning
19 himself because they had his grandmother, my mom, in the
20 jail so.

21 Q And when he spoke with the officers did
22 they say do you have the money to afford an attorney or
23 explain to him his rights as to having an attorney present
24 before he spoke to them?

25 A Not at that time, no, ma'am.

Mr. Ward - Direct Examination by Ms. Blanchette

15

1 Q Okay, did you have the resources, let me
2 first ask you this, would you have been the one responsible
3 for obtaining him an attorney?

4 A Probably so at that time, me and my
5 brother.

6 Q Did you all have the resources whether
7 financially or just the knowledge of how to get him an
8 attorney?

9 A Not at that time cause we were trying, my
10 brother was in Tennessee and I lived at Charleston and we
11 tried to get together to try and find him and try to get my
12 mother out, trying to get some funds up to get a lawyer for
13 my mother first and then we couldn't get an attorney for
14 her so the State gave her an attorney and also Nicholas so.

15 Q Were you specifically aware of any promises
16 that law enforcement made to you or to Mr. Parker when he
17 started speaking to them?

18 A I know that my mama was supposed to be
19 released and the charges supposed to be dropped.

20 Q And that was your motivation for bringing
21 him in; is that correct?

22 A I wanted to bring him in because I was
23 concerned about his safety if they had of brought him or
24 came and got him from South Carolina so.

25 Q So you were present when he turned himself

Mr. Ward - Direct Examination by Ms. Blanchette

16

1 in, you were present when he began speaking with law
2 enforcement?

3 A Right.

4 Q Did you ever speak with Mr. Reuben Goude
5 about the case, his defense attorney?

6 A His attorney, no.

7 Q Okay, would you have been willing to speak
8 with him if he would have contacted you?

9 A Absolutely.

10 Q Okay, and were you present and/or available
11 when Mr. Parker went to trial back in January and February
12 2007?

13 A The first day I was there, but I couldn't
14 take any more time off from work so.

15 Q If you would have been subpoenaed as a
16 witness would you have made sure that you were there?

17 A Yes, I would have.

18 Q Okay, and would you have testified to the
19 events that you've testified to today?

20 A Yes, I would have.

21 Ms. Blanchette: Your Honor, if I could just beg
22 the Court's indulgence for one moment.

23 Q (Continuing) Is there anything else
24 concerning Mr. Parker and those conversations with law
25 enforcement that you'd like to tell the Court about today?

Mr. Ward - Cross Examination by Ms. Catoe

17

1 A I think that's about it.

2 Ms. Blanchette: Okay, Your Honor, I have no
3 further questions.

4 The Court: Ms. Catoe?

5 Ms. Catoe: May it please the Court?

6 Cross Examination

7 By Ms. Catoe:

8 Q Mr. Ward, just a couple of questions for
9 you, now the events in question that led to the charges
10 occurred in a trailer park, BeBe's Trailer Park, and then
11 at your mother's house; is that correct?

12 A Correct.

13 Q All right, and you were not present for
14 those events?

15 A No, ma'am.

16 Q All right, and were you present when Mr.
17 Parker, the applicant, gave his video statement to police?

18 A No, ma'am.

19 Q All right, so you were not present when he
20 waived his Miranda rights on video tape?

21 A No, ma'am.

22 Ms. Catoe: All right, thank you, sir.

23 The Court: Any redirect?

24 Ms. Blanchette: No, Your Honor, thank you.

25 The Court: All right, what was the witnesses

Mr. Ward - Redirect Examination by Ms. Blanchette

18

1 testimony about what he heard the applicant say to law
2 enforcement, was it that I didn't kidnap her?

3 Ms. Blanchette: Yes, I believe Mr. Ward just
4 stated that he explained that my client told law
5 enforcement that he didn't kidnap her.

6 The Court: Okay, any further questions of this
7 witness?

8 Ms. Blanchette: I'll just ask Mr. Ward if I got
9 that correct.

10 Redirect Examination

11 By Ms. Blanchette:

12 Q Did I rephrase that properly?

13 A Right.

14 The Court: All right, anything else?

15 Ms. Blanchette: No, Your Honor, thank you.

16 The Court: Thank you, you can step down.

17 Ms. Blanchette: Your Honor, we'd call Nicholas
18 Parker to the stand.

19 The Court: All right, and, Ms. Blanchette, just
20 to let you know that as we go through the hearing this
21 morning the presentation of your case if you need some time
22 to discuss any issues just ask me; I have a tendency to
23 keep going and at sometimes I might be a little oblivious
24 if you want to stop.

25 Ms. Blanchette: Thank you, Your Honor, I

Mr. Parker - Direct Examination by Ms. Blanchette

19

1 appreciate that.

2 The Court: Okay.

3 Nicholas Parker

4 being first duly sworn, testified as follows:

5 Madam Clerk: Please be seated and state your
6 name for the record.

7 The Court: Has he testified in the PCR
8 proceeding yet?

9 Ms. Blanchette: He did testify in the prior
10 proceeding, Your Honor.

11 The Court: So this is going to be a redo as
12 well?

13 Ms. Blanchette: Yes, Judge John, the State may
14 correct me if I'm wrong, he was very specific that he
15 wanted us to redo the entire hearing. The reason he
16 continued it I had not been provided Mr. Goude's file.

17 The Court: Okay.

18 Ms. Blanchette: So he continued it so I could
19 prepare based upon that file.

20 The Court: Fair enough, okay, you can go ahead.

21 The Witness: Nicholas Drew Parker.

22 Direct Examination

23 By Ms. Blanchette:

24 Q And, Mr. Parker, are you currently
25 incarcerated?

Mr. Parker - Direct Examination by Ms. Blanchette

20

1 A Yes, ma'am.

2 Q And where are you currently housed at?

3 A Broad River Institute.

4 Q Okay, and we are here today about the
5 application you filed that's been documented at 2010-CP-22-
6 0190; is that correct?

7 A Yes, ma'am.

8 Q And by way of that application and two
9 amendments along with our verbal amendment today you are
10 alleging that your attorney was ineffective and asking this
11 Court for a new trial; is that correct?

12 A Yes, ma'am.

13 Q Now, Mr. Parker, we have prepared for this
14 case now for years and I've explained to you that by asking
15 for a new trial you are essentially asking the Court to set
16 aside your conviction on the kidnaping charge and allow you
17 to begin the process all over again with no guarantee of
18 less time; do you understand that?

19 A Yes, ma'am.

20 Q And knowing that and knowing that there
21 could be risk involved you want to go forward today?

22 A I do.

23 Q Okay, now you went to trial back in January
24 through February 2007; is that correct?

25 A Yes, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette

21

1 Q And who represented you at that time?

2 A Reuben Goude.

3 Q And you went to trial facing indictment
4 number 2006-GS-22-268 burglary in the first degree; is that
5 correct?

6 A Yes, ma'am.

7 Q And what was the outcome on that
8 indictment?

9 A Not guilty.

10 Q And you also were facing 2006-GS-22-269 for
11 kidnaping and what was the outcome on that indictment?

12 A Guilty.

13 Q And what sentence did you receive?

14 A Twenty-five years.

15 Q And was there a victim of this kidnaping
16 and what was her name?

17 A Her name was Belinda Mitchell.

18 Q And how is it that you knew Ms. Mitchell?

19 A We had been boyfriend girlfriend apparently
20 about two years.

21 Q Okay, and did you have an appeal after you
22 were convicted?

23 A Yes, ma'am, I did.

24 Q Do you remember who handled that for you?

25 A I think it was Catherine Hudgins.

Mr. Parker - Direct Examination by Ms. Blanchette

22

1 Q Okay, and do you remember if she filed a
2 merit or Anders brief?

3 A I think it was an Anders brief.

4 Q And do you recall what the outcome of your
5 appeal was?

6 A I think I waived it but it didn't have no
7 merit so I mean I didn't think it had enough weight to do
8 anything so we went ahead with the PCR.

9 Q Okay, was it actually your conviction was
10 affirmed by the Court of Appeals; is that correct?

11 A Yes, ma'am.

12 Q Okay, now let's go back to the very
13 beginning, you turned yourself in on March 9th, 2006; is
14 that correct?

15 A Yes.

16 Q And did you go up for a bond or what
17 happened after you turned yourself in?

18 A Yeah, I went for a bond probably two days
19 later and they denied me bond.

20 Q Were you appointed an attorney or did you
21 retain one?

22 A I was appointed.

23 Q And who were you appointed?

24 A Reuben Goude.

25 Q And did you have a preliminary hearing in

Mr. Parker - Direct Examination by Ms. Blanchette

23

1 this case?

2 A No, ma'am, he waived it without my
3 knowledge.

4 Q And now do you understand the importance of
5 a preliminary hearing?

6 A Yes, I do.

7 Q Okay, and would you have requested that
8 your attorney waive that or hold that preliminary hearing?

9 A Hold it.

10 Ms. Blanchette: Your Honor, I have about ten
11 exhibits, would you like me to ask every time to approach
12 or may I just approach?

13 The Court: You can just approach, is there any
14 agreement that these are going to come in?

15 Ms. Catoe: Yes, Your Honor, I've reviewed all
16 the exhibits and they're fine, the State has no objections.

17 The Court: Okay, they can be, however you want
18 to do, you don't need to keep asking me.

19 Ms. Blanchette: Okay, thank you, Your Honor.

20 Q (Continuing) Mr. Parker, to begin I'm just
21 going to show you a copy here of an arrest warrant that's
22 already in the record?

23 A All right.

24 The Court: Give me the number, exhibit number?

25 Ms. Blanchette: Yes, this is the arrest

Mr. Parker - Direct Examination by Ms. Blanchette

24

1 warrant.

2 The Court: I mean, has it been, got a sticker on
3 it?

4 Ms. Blanchette: No, this is already in the
5 record and the Judge, in your packet so I wasn't going to
6 introduce this as an exhibit, I was just showing him this
7 for reference.

8 The Court: Okay, well if it's not going to be
9 in evidence and it's in my packet I just want to make sure
10 that there's no question later on what, what you put in the
11 record.

12 Ms. Blanchette: Right, I don't plan to
13 introduce that, I was just asking before I approached, Your
14 Honor.

15 The Court: All right, okay, so that's the
16 arrest warrant?

17 Ms. Blanchette: Yes, the arrest warrant on the
18 kidnaping charge.

19 Q (Continuing) Do you remember when you got
20 that arrest warrant, Mr. Parker?

21 A Yes, it was like after I, after I got my
22 first bond denied it was probably two days after that.

23 Q Okay, and did you ever go over that arrest
24 warrant and specifically what it alleges as to the
25 kidnaping charge with your attorney?

Mr. Parker - Direct Examination by Ms. Blanchette

25

1 A No, ma'am, I just, he showed it to me but
2 we never talked about it.

3 Q Mr. Parker, I'm also going to show you a
4 copy of the indictment that was filed with the Court on the
5 kidnaping charge?

6 A All right.

7 Q Do you recall when you received that
8 indictment?

9 A I think I got this the day of I got locked
10 up or it might have been, no, the next day before I went to
11 trial, I mean I get my bond.

12 Q Did you have the opportunity to
13 specifically go over that indictment with your attorney?

14 A No, ma'am.

15 Q Did you ever go over the language and the
16 statute alleged on that indictment?

17 A No, ma'am.

18 Q Okay, now did you have a concern regarding
19 the witnesses listed on that indictment?

20 A Yeah, it never had a specific person, it
21 just said Georgetown Sheriff Department.

22 Q So you were never aware of which officer
23 went to the grand jury to get this indictment on you; is
24 that correct?

25 A Yes, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette

26

1 Q And did you discuss that with your
2 attorney?

3 A No, we never talked about it.

4 The Court: Repeat that question, please, about
5 the law enforcement officer not being mentioned in the
6 indictment?

7 Ms. Blanchette: (Continuing)

8 Q On the front of indictment who does it list
9 as the witnesses?

10 A Georgetown Sheriff's Department.

11 Q And it doesn't list a specific officer; is
12 that correct?

13 A Yes, ma'am.

14 Q Okay, do you have an issue with that?

15 A Yes, ma'am.

16 Q And what is that?

17 A I would like to know who presented it.

18 Q And did you ever have the opportunity to
19 discuss that with your defense attorney?

20 A No, ma'am, I didn't.

21 Ms. Blanchette: Does that clarify, Your Honor?

22 The Court: Yes, ma'am.

23 Ms. Blanchette: (Continuing)

24 Q Do you remember how many times you met with
25 your attorney prior to trial?

Mr. Parker - Direct Examination by Ms. Blanchette

27

1 A Approximately three times.

2 Q Do you recall what happened at that first
3 meeting?

4 A The first meeting all the lawyers and all
5 the Solicitors had come to the jailhouse because the
6 jailhouse was overcrowded and they were trying to let
7 people out and so the first time I talked to him he had a
8 plea for me for thirteen to sixteen; and I started trying
9 to give him a little bit information about the case and
10 then he told the Solicitor to hold on he needed to talk to
11 me more and then I went back to my cell.

12 Q Do you recall about how long that meeting
13 lasted?

14 A I'd give it ten minutes but I don't even
15 think it was that long.

16 The Court: Said he had an offer of what, I
17 couldn't understand you?

18 A Thirteen to sixteen.

19 The Court: Thirteen to sixteen?

20 The Witness: (Continuing)

21 A Yes, sir.

22 Q Just make sure you slow down and you always
23 speak in the mike, we both have to be careful of that?

24 A All right.

25 Q Mr. Parker, can you identify what that

Mr. Parker - Direct Examination by Ms. Blanchette

28

1 appears to be for the record?

2 A Yes, it's a note from the Solicitor's
3 office to Reuben Goude.

4 Q Okay, and what is the date on this letter?

5 A November 15th, 2006.

6 Ms. Blanchette: Your Honor, at this time I'd
7 introduce this letter as Applicant's Number 1.

8 The Court: Any objection?

9 Ms. Catoe: No objection, Your Honor.

10 The Court: You got a copy for me?

11 Ms. Blanchette: I do, Your Honor.

12 (Applicant's Exhibit Number 1 marked and entered
13 into evidence.)

14 Ms. Blanchette: (Continuing)

15 Q Mr. Parker, Mr. Parker, does this letter
16 actually address that offer between thirteen and sixteen
17 years?

18 A Yes, ma'am, it does.

19 Q Okay, and does it say that that offer was
20 discussed with you when they all went to visit you at the
21 jail on November 13th, 2006?

22 A Yes, ma'am.

23 Q Okay, and as far as that offer is concerned
24 what discussions did you have with your attorney about it?

25 A We really didn't talk about it, he just

Mr. Parker - Direct Examination by Ms. Blanchette

29

1 said this is the offer they, they offering you, you going
2 to take it or not, and I was like well you don't even know
3 any background on the case let me explain some things to
4 you, so I started explaining how the case went and then he
5 told the Solicitor that he needed to talk to me more to
6 find out more about the case before ---

7 Q So the offer was made but you all had not
8 discussed the case and decided that you would need to
9 discuss the case further; is that correct.

10 A Correct, yeah.

11 Q Okay, now at your second meeting, do you
12 remember when that was and what you all discussed?

13 A The second meeting was two Friday's before
14 I went to trial.

15 Q And what occurred at that meeting?

16 A He, we, he had brought some paperwork but
17 he had made some racial comments in the middle of all that
18 so we never really went over any of my paperwork ---

19 The Court: They made some what, I can't
20 understand you.

21 The Witness: (Continuing)

22 A Some racial comments.

23 The Court: Racial comments.

24 Ms. Blanchette: (Continuing)

25 Q And, Mr. Parker, I might ask what the Judge

Mr. Parker - Direct Examination by Ms. Blanchette

30

1 is going to ask, could you explain that, please, cause you
2 know your case but you've got to remember you need to
3 explain these things to us?

4 A He, he just told me don't go in the
5 courtroom with a tee shirt saying "Kill Whitey," he said
6 you want to walk in a black, or a white neighborhood with a
7 tee shirt saying "I Like Black People," and he said don't
8 go in there acting like a hard core white boy gangster
9 rapper.

10 Q Now before you guys had that exchange it
11 doesn't sound like it went too well. Had you told him
12 about any records or witnesses or anything that needed to
13 be done before your trial date?

14 A Yeah, I had, I had, I didn't talk to him
15 face to face but I had, I had been calling him on the phone
16 numerous times.

17 Q Okay, were there specifically any records
18 you asked him to obtain?

19 A Yes, some phone records.

20 Q Okay, and what were those phone records?

21 A Well I had called home and the victim was
22 at my grandmother's house, so me and her talked on the
23 phone, like two phone calls which were probably thirty
24 minutes, and I told him that the conversation that we had
25 on the phone if he would get them records it would clear

Mr. Parker - Direct Examination by Ms. Blanchette

31

1 everything up.

2 Q And do you know if he ever got those
3 records?

4 A No, ma'am.

5 Q And ---

6 The Court: I'm sorry, phone records of a
7 conversation of what?

8 Ms. Blanchette: (Continuing)

9 Q Would you repeat yourself, please?

10 The Court: You'll have to talk a lot slower.

11 The Witness:: (Continuing)

12 A Right, the conversation between me and the
13 victim where I had called home, me and her had spoke on the
14 phone and I asked her why, why she got me locked me up and
15 she said that she didn't want me to be in jail that her
16 mama made her do it. She, she just explained things in
17 that conversation that would have helped me in my trial.

18 Q So the victim had called ---

19 A No, I had called there.

20 Q I'm sorry, you had called your
21 grandmother's house, the victim was present, you had a
22 conversation with her that you thought was favorable to
23 your case?

24 A Yes, ma'am.

25 Q So you asked him to obtain those records?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A That's correct.

2 The Court: And could you clarify with the
3 witness when the conversation was and how the content of it
4 would be made known?

5 Ms. Blanchette: I'd be happy to, Your Honor.

6 The Court: If it's recorded.

7 Ms. Blanchette: Uh-huh.

8 The Court: Okay

9 Ms. Blanchette: (Continuing)

10 Q Do you remember approximately when in time
11 that conversation took place?

12 A Like around a date?

13 Q Yes.

14 A I was, I was in jail, probably around
15 October, yeah, around October, 2006.

16 Q And, and why is it, Mr. Parker, that you
17 asked your attorney to get that recording; what did you
18 think that would do for your case?

19 A It would help me out because she was saying
20 I was kidnaped but on the conver - in the conversation she
21 said that I didn't kidnap her.

22 Q So the State was alleging that you kidnaped
23 her but you in fact had a conversation with her where she
24 agreed with your version of events that you did not kidnap
25 her?

Mr. Parker - Direct Examination by Ms. Blanchette

33

1 A Right, we went, we went over the whole
2 story how everything happened. She, she told everything
3 but when she went to Court she told something different on
4 the stand than what she told me on the phone records.

5 Q And speaking of her testifying at Court
6 that recording then could have been used to impeach her
7 testimony?

8 A Yes, ma'am.

9 Q Okay, is there anything else regarding that
10 phone recording at this point that you'd like to tell the
11 Court?

12 A No, ma'am.

13 Q Okay, and, Mr. Parker, I'll just jump ahead
14 a little bit, did we in fact try to get that recording?

15 A Yes, ma'am, we did.

16 Q And you asked me to obtain that recording
17 so we could refer to it here at the PCR hearing?

18 A That's right.

19 Q Meet our burden and show the Court the
20 importance of that recording; is that correct?

21 A Yes, ma'am.

22 Q And if you could just identify this little
23 miniature letter?

24 A Yes, that's the letter that they sent you
25 saying that, that they don't have it in their system no

Mr. Parker - Direct Examination by Ms. Blanchette

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1 more because the system has been updated.

2 Q And what's the date on this letter?

3 A April 18th, 2011.

4 Ms. Blanchette: Your Honor, at this time I'd
5 introduce this letter dated April 18th, 2011, as
6 Applicant's Number 2.

7 The Court: Any objection?

8 Ms. Catoe: No objection, Your Honor.

9 (Whereupon, Applicant's Exhibit Number 2 marked
10 and entered into evidence at this time.)

11 Ms. Blanchette: (Continuing)

12 Q And this letter states that they've updated
13 their system so they can no longer get us those records; is
14 that correct?

15 A That's correct.

16 Q And this was in 2011 that we were trying to
17 get the records?

18 A Right.

19 Q Correct?

20 A Right.

21 Q And you asked Mr. Goude back in 2006 to
22 obtain those records?

23 A Correct.

24 Q Now, Mr. Parker, I don't think we've talked
25 about your last meeting yet, what happened at your last

1 meeting before trial?

2 A The last meeting was the Friday before I
3 went to trial and when he come in, when he came to the
4 jailhouse they wouldn't let him see me like face to face so
5 he had to talk to me behind the glass; so we was already,
6 he was already agitated when he was talking to me, and all
7 he told me was that he tried to get a plea for ten years,
8 he couldn't get it, and that we was going to trial Monday.

9 Q And since you were going to trial on Monday
10 did you have a chance to go through the discovery with him
11 in that meeting where you guys were between glass?

12 A No, ma'am.

13 Q Did you know what the State's evidence was
14 going to be that they were going to use at trial against
15 you?

16 A No, ma'am.

17 Q Had you ever received the complete
18 discovery package yourself and had the opportunity to go
19 through it?

20 A I received some of it but a lot of it was
21 missing.

22 Q Specifically did you have an opportunity to
23 go through the documents that your attorney received from
24 the State Law Enforcement Division?

25 A They was pieces of it in there but it

Mr. Parker - Direct Examination by Ms. Blanchette

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1 wasn't the whole, the whole, like all I got now wasn't in
2 there then.

3 Q Okay, Mr. Parker, I'm going to hand you
4 this and ask that you identify it for the record, please?

5 The Court: It's got to be marked?

6 Ms. Blanchette: They will be, Your Honor.

7 The Court: Okay, let's mark it before you hand
8 it to him for the record.

9 Ms. Blanchette: Okay.

10 (Whereupon, Applicant's Exhibit Number 3, 4, 5
11 and 6 marked for identification.)

12 The Court: To make sure it's the same thing,
13 this is Number 4?

14 Ms. Blanchette: This is actually Number 3.

15 The Court: Okay.

16 Ms. Blanchette: (Continuing)

17 Q Mr. Parker, could you identify what's been
18 marked as Applicant's Number 3 for the record, please?

19 A Yeah, it's a SLED report for DNA analysis.

20 Q Mr. Parker, do you specifically recall if
21 you were provided a copy of this report prior to trial and
22 had the opportunity to review it with your attorney?

23 A I had pieces of this but I never went over
24 with it nobody, with my attorney.

25 Q I'm sorry, what was that?

Mr. Parker - Direct Examination by Ms. Blanchette

37

1 A I said I never went over it with him.

2 Q Okay, and have you had the opportunity to
3 review it since your trial?

4 A Yes, ma'am.

5 Q Okay, and is there specific information
6 here that you would have liked to have discussed with your
7 attorney?

8 A Yes, like for the fingerprints it says,
9 where's it at, this is the one for the hair, yeah, this is
10 the one for the hair, it says that it was hair on there but
11 it wasn't, it couldn't be come back as human hair.

12 The Court: Hair on what?

13 The Witness: (Continuing)

14 A Hair on duct tape. They had, they had found
15 hair in like in the back of the truck, duct tape, things
16 like that, but they never came back as a match for, for the
17 victim or anybody in the case.

18 Q So heading into trial you had not discussed
19 this DNA analysis report with your attorney?

20 A No, ma'am. I had, I had mentioned some
21 things on the phone to him but as far as going over it back
22 and forth we never had.

23 Q Is there anything else regarding the DNA
24 analysis report that you would like to bring to the Court's
25 attention?

Mr. Parker - Direct Examination by Ms. Blanchette

38

1 A Yeah, they had something about fingerprints
2 that they had found fingerprints but none of the
3 fingerprints belonged to anybody in the case neither.

4 Q Well I'll hand you the other reports, we've
5 already marked this as Applicant's Number 4; could you
6 identify what this is for the record, please?

7 A Yeah, that's latent prints from the SLED
8 report.

9 Q Did you have the opportunity to review and
10 discuss this report with your attorney prior to trial?

11 A No, ma'am.

12 Q And is there information in this report
13 that you would have wanted to discuss with him?

14 A Yes, ma'am.

15 Q And what is that?

16 A About the fingerprints it said they had
17 found fingerprints but none of them matched anybody in the
18 case.

19 Q And is that information that you think you
20 should have known and consulted with your attorney about
21 prior to trial?

22 A Yes, ma'am.

23 Q And finally, Mr. Parker, I'll hand you
24 what's been marked as Applicant's Number 5, and what type
25 of report is that from SLED?

1 A That's the trace evidence from the SLED
2 report.

3 Q And did you have the opportunity to review
4 and discuss this report with your attorney prior to trial?

5 A No, ma'am.

6 Q And is there any specific information in
7 this report that you would have wanted to have discussed
8 with him in preparation for your trial?

9 A Yeah, about how the pieces of duct tape
10 matched one another.

11 Q And what specifically regarding that did
12 you want to discuss with him?

13 A Like they could have come off a piece of
14 box or they would, like the last, the last piece that's
15 supposed to come off first supposed to match the last piece
16 on the duct tape roll but how did they know which piece is
17 what piece.

18 Q And when you heard this information
19 testified to at trial were you confused by it because you
20 had not discussed it with your attorney?

21 A Yes, ma'am.

22 Q So going back to that plea offer for
23 thirteen to sixteen years you didn't understand any of this
24 evidence at that point, did you?

25 A No, I ---

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Catoe: I object to the leading questions,
2 Your Honor.

3 The Court: Sustained.

4 The Witness: (Continuing)

5 A I didn't, I didn't even have this ---

6 Q You can't answer, I'm sorry, when he
7 sustains ---

8 The Court: Rephrase the question.

9 Ms. Blanchette: Thank you, Your Honor.

10 The Court: You can say did you understand, you
11 can't say you didn't understand.

12 Ms. Blanchette: Thank you.

13 Q (Continuing) When you were offered the
14 thirteen to sixteen years did you understand the evidence,
15 specifically the SLED evidence that was going to be
16 utilized at your trial?

17 A No, ma'am, cause I didn't, I didn't, I
18 didn't get none of my Rule 5 until after I had my bond in
19 December.

20 Q Mr. Parker, did you ever tell your attorney
21 that you'd be willing to do a polygraph test?

22 A Yes, ma'am.

23 Q And did that take place?

24 A No, ma'am, it didn't.

25 Ms. Blanchette: Your Honor, you admitted all

Mr. Parker - Direct Examination by Ms. Blanchette

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1 the other ones into evidence, correct, 3, 4, and 5?

2 The Court: Any objection, any objection to 1
3 through 5?

4 Ms. Catoe: No, Your Honor, and no objection to
5 6 either.

6 The Court: Okay.

7 (Whereupon, Applicant's Exhibit Number 3, Number
8 4, Number 5 and Number 6 entered into evidence at this
9 time.)

10 Ms. Blanchette: (Continuing)

11 Q Mr. Parker, could you identify what's been
12 marked as Applicant's Number 6 for the record, please?

13 A Yeah, it's a request for a polygraph test.

14 Q And who appears to have written that
15 letter?

16 A Reuben Goude.

17 Q And who's it written to?

18 A The Solicitor.

19 Q Okay, and what is the date on that letter?

20 A May 25th, 2006.

21 Q And by that letter it appears he's
22 requesting a polygraph test for you but did that ever
23 happen?

24 A No, ma'am, it didn't.

25 Q And that was something that you wanted in

Mr. Parker - Direct Examination by Ms. Blanchette

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1 this case?

2 A Yes, ma'am.

3 Q Why did you want a polygraph test?

4 A Cause I felt I didn't kidnap her.

5 The Court: Is there any obligation on the part
6 of the State to offer him one?

7 Ms. Blanchette: I don't believe there is, Your
8 Honor.

9 The Court: So the Counsel did comply with that
10 request at least?

11 Ms. Blanchette: He did submit the letter; I was
12 going to ask Counsel about what happened as a result.

13 The Court: All right, I just wanted to make
14 sure I read it correctly.

15 Ms. Blanchette: Yes, thank you, Your Honor.

16 Q (Continuing) Did you ask your attorney to
17 speak with some witnesses?

18 A Yes, ma'am.

19 Q I'm sorry, what was your answer?

20 A Yes, ma'am.

21 Q Okay, and at your prior evidentiary hearing
22 that was continued we called your brother, Joshua Parker,
23 your brother, Mathias Parker, your cousin, Kenneth ---

24 The Court: You have to give me those slow, more
25 slowly.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: I'm sorry, Your Honor.

2 Q (Continuing) We called at your prior
3 evidentiary hearing in front of Judge John we called your
4 brother, Joshua Parker?

5 A Yes, ma'am.

6 The Court: Okay.

7 Ms. Blanchette: (Continuing)

8 Q We called your brother Mathias Parker,
9 spelled m-a-t-h-i-a-s?

10 A Yes, ma'am.

11 Q And we also called your cousin Kenneth
12 Roland Ward, Jr.?

13 A Yes, ma'am.

14 Q Are those witnesses that you asked your
15 attorney to speak with?

16 A Yes, ma'am.

17 Q Okay, and today we heard from your uncle
18 Kenneth Roland Ward, Sr.?

19 A Correct.

20 Q You also asked your attorney to speak with
21 him?

22 A Yes, ma'am.

23 Q And were there any other witnesses you
24 asked your attorney to speak with that he did not?

25 A My grandmother and my mother but he spoke

Mr. Parker - Direct Examination by Ms. Blanchette

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1 with them briefly, and my brother's girlfriend, Debbie.

2 Q And do you know her full name?

3 A I think it's Debbie Veracruyse, I don't
4 know how to spell her last one.

5 Q Okay --

6 The Court: And what is her, what's your
7 relationship with her?

8 The Witness: (Continuing)

9 A It's my brother's, well his, his, his baby
10 mother but she had passed away before my trial.

11 The Court: Okay.

12 Ms. Blanchette: (Continuing)

13 Q And just to follow up on what you just
14 stated, Ms. Veracruyse was deceased at the time of your
15 trial; is that correct?

16 A Yes, ma'am.

17 Q But is it your understanding Mr., she had
18 provided a statement for Mr. Goude prior to the car
19 accident where she lost her life?

20 A Well I won't say a statement, I would say
21 an affidavit that she said that she would come to testify
22 on my behalf.

23 Q Okay --

24 The Court: When did she die?

25 A October of 2006.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: This is Number 7?

2 Ms. Blanchette: It will be, Your Honor.

3 The Court: For I.D..

4 (Whereupon, Applicant's Exhibit Number 7 marked
5 for identification.)

6 The Court: Okay, her relationship to you was
7 the mother of your brother's child?

8 The Witness: (Continuing)

9 A Yes, sir.

10 Q Mr. Parker, could you identify what that
11 appears to be for the record, please?

12 A That's the affidavit that she had wrote to
13 Reuben Goude.

14 Q And when your last evidentiary hearing was
15 continued we obtained that from Mr. Goude's file; is that
16 correct?

17 A Yes, ma'am.

18 Ms. Blanchette: Okay, Your Honor, at this time
19 I'd move this statement in as Applicant's Number 7?

20 The Court: Any objection?

21 Ms. Catoe: No objection, Your Honor.

22 (Whereupon, Applicant's Exhibit Number 7 entered
23 into evidence at this time.)

24 Ms. Blanchette: (Continuing)

25 Q Mr. ---

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: All right, it's in.

2 Ms. Blanchette: (Continuing)

3 Q Mr. Parker, this statement is signed May
4 28, 2006, by I believe it's Debra Veracrus, if I'm saying
5 that correctly?

6 A Yes, ma'am.

7 Q And this was information that you thought
8 was important for your attorney to have prior to trial; is
9 that correct?

10 A Yes, ma'am, it is.

11 Q And she explains that she was in the home
12 when yourself and the victim were present on the day in
13 question?

14 A That's correct.

15 Q And she goes on to explain that all your
16 activities and the victim appeared to be perfectly fine and
17 voluntarily present in the home?

18 A Yes, ma'am.

19 Q Okay, now at the top there's a note that
20 I'll ask Mr. Goude about that says she was deceased in
21 October 2006, how, how did that happen?

22 A She was working and a drunk driver hit her
23 head on.

24 Q Okay, and she was an eyewitness to the
25 events that occurred in, in your grandmother's home that

1 day?

2 A Yes, ma'am.

3 Q Okay, and you wanted her utilized at trial?

4 A That's correct.

5 Q Did your attorney ever bring this statement
6 to the Solicitor's attention or attempt to introduce this
7 statement as a result of her death at your trial?

8 A No, ma'am.

9 Q And is that a matter that you asked him to
10 do?

11 A Yes, ma'am.

12 Q Is there anything else regarding this
13 statement and her potential trial testimony that you would
14 like to tell the Court?

15 A I mean she had talked with the victim
16 during everything was going on or the, or the action of the
17 crime whatever, but she was there the whole time and she
18 talked to the victim so she would have had first hand
19 experience and knowledge of what was really going on, too.

20 Q And she would have been able to inform the
21 jury about how the victim appeared?

22 A Correct.

23 Q And if the victim ---

24 Ms. Catoe: Object to the leading question
25 again, Your Honor.

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1 The Court: Sustained, it's got to be his
2 testimony.

3 Ms. Blanchette: I understand, Your Honor, thank
4 you. I apologize, I'm a little slower today than usual.

5 The Court: That's okay.

6 (Whereupon, Applicant's Exhibit Number 8 marked
7 for identification.)

8 The Court: That's Number 8.

9 Ms. Blanchette: (Continuing)

10 Q Mr. Parker, could you identify this
11 document for the record, please?

12 A Yeah, it's a prospective defense witness.

13 Q And this is a handwritten document?

14 A Yes, ma'am.

15 Q Okay --

16 Ms. Blanchette: Your Honor, at this time I
17 would move this in as Applicant's Number 8?

18 Ms. Catoe: No objection, Your Honor.

19 The Court: All right, that's in.

20 (Whereupon, Applicant's Exhibit Number 8 entered
21 into evidence at this time.)

22 Ms. Blanchette: (Continuing)

23 Q Now could you slowly tell us who is listed
24 on there as potential witnesses?

25 A It says my cousin Roland Ward, which is

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1 Jr., my mother, Sherry Ward Parker, my grandmother, Shirley
2 Ward, Leonard Long, that was the guy I was working for at
3 the time, and myself.

4 Q And were those people that you had told
5 your attorney about?

6 A Yes, it was, I told him more people, too,
7 but that's all he wrote on there.

8 Q And we've already talked about Ms.
9 Veracrus, she's not listed on here and that's because she
10 was deceased?

11 A Yes, ma'am.

12 Q And but your Uncle Kenny Ward, Sr, why did
13 you want him called at your trial?

14 A Because when I turned myself in he was
15 right there and he heard everything that went on.

16 The Court: Clarify, please, everything that
17 went on with what.

18 The Witness: (Continuing)
19

20 A Like when I turned myself in I asked like
21 Investigator Hayward asked me if I wanted to make a
22 statement and on the way up there my, it was all intentions
23 of me doing that, but when I got there I realized the
24 seriousness of the matter so I told him I might need a
25 lawyer, and he made a statement saying, well, my uncle, my

Mr. Parker - Direct Examination by Ms. Blanchette

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1 other uncle asked, he's like if, if he makes a statement
2 will it help him out at all and Investigator Hayward said,
3 yes, if he makes a statement he can get his bond lower and
4 it can help his time when he goes to court, so that right
5 there based on that that made me give them a statement.

6 Q Did your uncle have first hand knowledge of
7 what occurred at the police station?

8 A Yes, ma'am.

9 Q And was that first hand knowledge important
10 to whether or not your statement was voluntary?

11 A Yes, ma'am.

12 Q And did you want him called as a witness to
13 testify about those events he witnessed at the police
14 station, your reasons for turning yourself in, and why you
15 essentially gave a statement?

16 A Yes, ma'am.

17 Q Okay, were there any other reasons you
18 wanted him called?

19 A Because he, he was there the whole time far
20 as me turning myself in and all that, I mean that's pretty
21 much the only reason and I was talking to him like probably
22 a week before I turned myself and he knew I was scared and
23 that's why he turned me in or he brought me up there.

24 Q At your prior evidentiary hearing and in
25 the testimony that was provided to the Court via transcript

Mr. Parker - Direct Examination by Ms. Blanchette

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1 today your cousin Roland Ward, Jr. testified?

2 A Yes, ma'am.

3 Q Did you want him called as a witness at
4 your trial?

5 A Yes, ma'am.

6 Q And why is that, Mr. Parker?

7 A Because he was there also.

8 The Court: Where?

9 The Witness: (Continuing)

10 A When I turned myself in.

11 Q And you said he was there also when you
12 turned yourself in, what would it have been that he could
13 have testified to such as what he testified to at your
14 prior PCR?

15 A Of the statements that went back and forth
16 between us, me and Investigator Hayward.

17 Q So he also was an eyewitness to the events
18 that took place at the police station?

19 A Yes, ma'am.

20 Q Is there any other reason why you wanted
21 your cousin called as a witness?

22 A No, ma'am.

23 Q Your brother, Joshua Parker, testified
24 previously on your behalf at an evidentiary hearing and his
25 testimony has been provided to the Court via transcript?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Now your brother Joshua was present in the home on the day
2 that this kidnaping collectively took place?

3 A Yes, ma'am.

4 Q Okay, and why did you want him called as a
5 witness?

6 A One because of his girlfriend and she was
7 deceased so he may, might have shed some light on what she,
8 what she felt or what she had discussed with him and also
9 that he was there, too.

10 Q And when you say there, too, could you just
11 explain to the Court what he was there to see?

12 A At the time of, of the alleged crime.

13 Q So he was in your grandmother's home at the
14 same time the victim was that day during the time when you
15 allegedly kidnaped her; is that correct?

16 A Yes, ma'am.

17 Q Now your brother, Mathias Parker, also
18 testified at the prior evidentiary hearing, a copy of his
19 testimony has been provided to the Court today via
20 transcript; why is it that you wanted Mathias utilized,
21 first of all did you want him utilized at your trial?

22 A Yes, ma'am.

23 Q And why is that, Mr. Parker?

24 A Because when I had called home from the
25 jail he's the one that answered the phone so he had first

Mr. Parker - Direct Examination by Ms. Blanchette

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1 hand experience of, he could have proved that I talked to
2 her then and --

3 The Court: Who?

4 The Witness: (Continuing)

5 A The victim.

6 Q So you had previously mentioned the phone
7 call with the victim?

8 A Right.

9 Q That you asked Mr. Goude to get the
10 recording?

11 A Correct.

12 Q Mathias was present in your grandmother's
13 home when that call took place?

14 A Yes, ma'am, he's the one that answered the
15 phone and give the phone to her.

16 Q So he could, could he have verified that
17 that call took place that day?

18 A Yes, ma'am.

19 Q Okay, any other reasons you wanted your
20 brother, Mathias, utilized at trial?

21 A I mean he talked to her after everything
22 went on and during the whole time I was incarcerated, so he
23 might have had some things that she had told him or that he
24 might could have testified to but other than that, no.

25 Q And to establish your burden we've called

Mr. Parker - Direct Examination by Ms. Blanchette

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1 all those witnesses at your evidentiary hearings; is that
2 correct?

3 A Yes, ma'am.

4 Q Did you ever try to get a new attorney in
5 this case?

6 A Yes, ma'am, I wrote Reuben Goude a letter
7 telling him after he made a racial comments to me I felt
8 that our relationship been tainted to I asked him to
9 withdraw from my representation.

10 The Court: Could you ask him to, please, can
11 the record, does everyone agree for the record the
12 applicant is white?

13 Ms. Blanchette: Yes, I was just going to
14 clarify that.

15 The Court: I think that needs to be, and Mr.
16 Goude is --

17 Ms. Blanchette: Is also white.

18 The Court: Okay, could you clarify this racial
19 component for me.

20 Ms. Blanchette: (Continuing)

21 Q Mr. Parker, we've talked about this before
22 and I know that you took his comments to have racial
23 component to them, but what is your race?

24 A White, Caucasian.

25 Q And what is Mr. Goude's race?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A Caucasian.

2 Q Okay, so you are of the same race?

3 A Yes.

4 Q Is that correct?

5 A Yes, ma'am.

6 Q Okay, if you could just explain so we have
7 this very clear cause I don't want you to be making
8 accusations against Mr. Goude that are not understood?

9 A Right.

10 Q Or mischaracterized, okay?

11 A Right.

12 Q What comment did he make that you took to
13 be a racial comment?

14 A He just told me do not act like a black
15 person, I guess cause the way I speak or the way I sound
16 because people from Charleston sound different from people
17 from Georgetown and the way I heard that's how he put it
18 like I was talking like I was a black person, I'm acting
19 like a black person, but I don't.

20 Q So you're, you're characterizing it as a
21 racial comment, would you agree that it also could be
22 considered just a prejudicial comment made against you ---

23 Ms. Catoe: Object to the leading question, Your
24 Honor.

25 The Court: Sustained.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: Your Honor, would you like me
2 to clarify it further or do you think that's sufficient for
3 the record? I was just trying to ---

4 The Court: I guess you better clarify because I
5 don't understand.

6 Ms. Blanchette: Okay.

7 The Court: What, what this has to do with the
8 PCR.

9 Ms. Blanchette: Okay.

10 The Court: He's saying his lawyer told him not
11 to act like a black person?

12 A Yes, sir.

13 The Court: Okay, I guess you, I'll allow a
14 little leading on that, Ms. Catoe, go ahead cause I need
15 some help with that.

16 Ms. Blanchette: I'd be happy to, Your Honor.

17 Q When did this comment take place?

18 A When our second meeting.

19 Q And as a result of the comments he made to
20 you did it cause a break down in your relationship with
21 him?

22 A Yes, ma'am, cause that, it shouldn't matter
23 how I talked or how I act, he should have represented me as
24 a lawyer like he should, it don't matter what color I am,
25 how I act or none of that, he should do his job to help me

Mr. Parker - Direct Examination by Ms. Blanchette

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1 do what's supposed to be done.

2 Q What was your reaction to his comments that
3 you should not act black or speak in the manner which you
4 do?

5 A I felt like he had characterized me as
6 being some type of way and that he didn't like that.

7 Q And as a result of that and other issues
8 with this preparation investigation did you contact him in
9 writing about being relieved from your case?

10 A Yes, ma'am.

11 Ms. Blanchette: Your Honor, would you like me
12 to go further into that issue?

13 The Court: No, ma'am, I understand it but can I
14 state for the record that I don't, I don't know how he
15 talks. He's speaking English to me so any, I'm not quite
16 sure where you're coming from but during the argument part
17 of this proceeding perhaps you can explain that to me, but
18 aside from the fact that he talks fast and he's white I
19 don't have any, I guess I'm clueless, maybe you can educate
20 me later on but you can talk further now to the witness
21 about trying to get a new lawyer.

22 Ms. Blanchette: Okay, thank you, Your Honor.

23 The Court: This is Number 9?

24 Ms. Blanchette: It is.

25 (Whereupon, Applicant's Exhibit Number 9 marked

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1 for identification.)

2 Ms. Blanchette: (Continuing)

3 Q Mr. Parker, could you identify that
4 document for the record, please, and it's a two page
5 document?

6 A Yeah, that's a copy of the envelope that I
7 sent him, Reuben Goude.

8 Q And what's on the second page?

9 A It is the letter that I actually, that was
10 in the envelope that I sent.

11 Q And what's the date on that letter?

12 A January 2nd, 2007.

13 Q Who's it written to?

14 A To Reuben Goude.

15 Q And who's it written by?

16 A By me.

17 Ms. Blanchette: Your Honor, at this time I'd
18 move this in as Applicant's Number 9.

19 The Court: Objection?

20 Ms. Catoe: No objection, Your Honor.

21 The Court: Okay, it's in.

22 (Whereupon, Applicant's Exhibit Number 9 entered
23 into evidence at this time.)

24 The Court: And the racial act of component is
25 in this letter, did you ask him about that?

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1 Ms. Blanchette: I'm going to tie that in, Your
2 Honor.

3 The Court: It's not in this letter, though?

4 Ms. Blanchette: I don't believe it specifically
5 states that.

6 The Court: All right.

7 Ms. Blanchette: (Continuing)

8 Q This letter is written January 2nd, 2007,
9 and you went to trial on February 2nd, I'm sorry, January
10 29th of that year; is that correct?

11 A Yes, ma'am.

12 Q What was your purpose in writing this
13 letter?

14 A Because I felt that he wasn't representing
15 me to his full capability because I had, I really had none
16 of my, my Rule 5 like I asked for. I asked for other
17 things that he didn't give me, the comments that he had
18 made to me my second visit I felt like our relationship was
19 already strained because it's like every time we seen each
20 other we was butting heads from the very beginning.

21 Q And you specifically state in this letter I
22 do not trust you, I do not feel safe with you representing
23 me, why was that, Mr. Parker?

24 A Because I didn't feel safe. I didn't feel
25 like he was doing his job like he should have been doing.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q And you also say your representation of me
2 in my defense falls below the norm of competent defense
3 counsel?

4 A Yes, ma'am.

5 Q Why did you say that, Mr. Parker?

6 A Because I asked him to do certain things
7 and he couldn't even do that and the conversation that we
8 had, the few that we did have over the phone and stuff it
9 was always quick, you know what I mean, it was never, he
10 never talked to me about anything. He said I'll talk to
11 you later or call back, you know what I'm saying, it was
12 always, it was never, we never sat down and, and talked
13 about anything dealing with the case.

14 Q And we've spent the entire morning going
15 over a lot of your concerns regarding preparation
16 investigation ---

17 A Right.

18 Q --- and you were in fact trying to address
19 those back in January 2nd of 2007; is that correct?

20 A Yes, ma'am.

21 Q You didn't want, did you want to get to the
22 point where you had to do it today?

23 A No, I was trying to nip everything in the
24 bud from the beginning.

25 Q Okay, and what happened after you sent this

1 letter?

2 A He, before I sent this letter he told me
3 my, my trial date was set for March, but after I sent this
4 letter then that's when my trial was backed up to January.

5 Q When you say backed up?

6 A Or, or rushed forward really.

7 Q Okay, so your trial date you thought was
8 going to be in March, you sent the letter and now you're
9 going ---

10 A Earlier.

11 Q --- to trial in a couple of weeks; is that
12 correct?

13 A Yes, ma'am.

14 Q Did he ever notify the Court as far as you
15 know that you wanted him to be relieved or that you all
16 were having these attorney/client relationship issues?

17 A No, ma'am.

18 Q Was there any type of motion held at the
19 beginning of your trial on this matter?

20 A No, ma'am.

21 Q Did you know any other way in which to
22 bring this to the Court's attention prior to your trial?

23 A No, ma'am, I didn't.

24 Q Anything else that you would like to
25 explain to the Court regarding your attorney's preparation

Mr. Parker - Direct Examination by Ms. Blanchette

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1 investigation in the break down in your relationship that
2 you spoke about?

3 A No, ma'am.

4 Q Let's turn to your trial then, Mr. Parker,
5 do you have a copy of your transcript in front of you?

6 A Yes, I do.

7 Ms. Blanchette: If I have the Court's
8 permission I will cite to the transcript pages and lines,
9 but I can summarize the testimony if that would be okay
10 with the Court?

11 The Court: All right.

12 Ms. Blanchette: (Continuing)

13 Q If you could look at ---

14 The Court: I guess she can object if she thinks
15 you're asking an improper question but as long as you give
16 me a page and line number we can go from there.

17 Ms. Blanchette: Okay.

18 Q (Continuing) You look at page one, the very
19 beginning, the State moved to amend your indictment at the
20 beginning of trial?

21 A Correct.

22 Q And that's the burglary first indictment,
23 were you present when that took place?

24 A No, ma'am.

25 Q Had you discussed that or any problems with

Mr. Parker - Direct Examination by Ms. Blanchette

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1 the indictments with your attorney?

2 A No, ma'am.

3 Q If you could turn to page twenty-five,
4 please?

5 The Court: What was the amendment, please?

6 Ms. Blanchette: They amended the indictment,
7 it's line six through thirteen to reflect the proper
8 subsection.

9 The Court: Okay, is that prejudicial?
10 Obviously a defendant should be in the courtroom but is
11 that prejudicial?

12 Ms. Blanchette: He is concerned that he was not
13 present. I just bring that to the Court's attention but
14 it's not the specific basis of a separate allegation.

15 The Court: So the ground would be that he was
16 not in the courtroom, not that it was ---

17 Ms. Blanchette: Yes, he was not present.

18 The Court: Not that it was amended?

19 Ms. Blanchette: Correct, Your Honor, just to
20 show the furtherance of the attorney/client break down in
21 this case.

22 The Court: Okay, all right.

23 Ms. Blanchette: (Continuing)

24 Q If you could, please, turn to page twenty-
25 five. If you look at, I'm sorry, prior to page twenty-five

Mr. Parker - Direct Examination by Ms. Blanchette

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1 your attorney made a motion to suppress because there was a
2 search and seizure done on a vehicle in this case; is that
3 correct?

4 A Yes, ma'am.

5 Q Now he made the motion and if you could
6 look at page twenty-five lines two through four when he was
7 asked specific grounds to give on that motion what did he
8 tell the Court?

9 A He said he had made all the motions that he
10 wants to make on it.

11 Q So in response to the Court's questions he
12 did not have any further answers or information; is that
13 correct?

14 A Yes, ma'am.

15 The Court: Are the grounds for the motion in
16 previous pages, Ms. Blanchette?

17 Ms. Blanchette: Your Honor, he begins making
18 the motion on page 22, most of that is the State responding
19 about the search and seizure.

20 The Court: Okay, so the Applicant's complaint
21 is that he had no further grounds or he had no grounds in
22 the first place?

23 Ms. Blanchette: Your Honor, I actually have a
24 couple more questions that might clarify that.

25 The Court: Okay.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: (Continuing)

2 Q If you could look at page twenty-six, the
3 Court specifically asks your attorney if he would like to
4 call any witnesses to support this motion; is that correct?

5 A Yes, ma'am.

6 Q And did he have any witnesses to call?

7 A No, ma'am, he didn't.

8 Q And later in your trial it would be found
9 on page two hundred twenty-one through two hundred twenty-
10 two, Investigator Morris actually testified that he asked
11 your grandma and grandpa for consent to do that search and
12 they would never sign the form?

13 A Correct.

14 Q Was that information that was testified to
15 at, to at trial told to the Court during this motion
16 hearing, did the Court had the advantage of knowing that?

17 A No, ma'am.

18 Q So that information that came out at trial
19 that your grandparents never signed the consent to search -
20 --

21 The Court: To search what?

22 Ms. Blanchette: (Continuing)

23 Q To search the vehicle in question was never
24 presented to the Court during the motion hearing to
25 suppress the evidence found in that vehicle; is that

Mr. Parker - Direct Examination by Ms. Blanchette

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1 correct?

2 A That's correct.

3 Q And are you alleging that your attorney was
4 ineffective for failing to make a viable argument, call
5 witnesses, and ensure that that information was given to
6 the Court in consideration of that motion?

7 A Yes, ma'am.

8 Q Now if you could ---

9 The Court: So I won't have to ask later on,
10 could you ask him whose car it was?

11 Ms. Blanchette: Yes, I'd be happy to.

12 The Court: Okay.

13 Ms. Blanchette: (Continuing)

14 Q Who, whose vehicle was that?

15 A It was in my grandfather's name but my
16 grandma and him drove it together.

17 Q And just to be very clear why did that
18 vehicle matter in this case?

19 A Because that was the vehicle in question
20 for the kidnaping or apparent.

21 Q And when would you all have been in that
22 vehicle, how did it come into play?

23 A Because that's, that's how we moved
24 everything, that's how we went and got her and took her
25 back home, everything was in that vehicle.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q And we talked about this before, you know
2 who we is ---

3 A Yeah, me ---

4 Q --- but could you just ---

5 A All right.

6 Q Let me finish, Mr. Parker, before you
7 answer, who is the we that were in that vehicle?

8 A Me, my grandmother, and the victim, Belinda
9 Mitchell.

10 Q Okay, now if you could turn to page forty-
11 five, please, and if you could look at lines fourteen
12 through nineteen, there your attorney indicates he has no
13 objection to the State using instances of prior violence
14 between yourself and the victim. Did you discuss with your
15 attorney that he was going to stipulate or allow for
16 instances of prior violence with the victim to be used by
17 the State?

18 A No, ma'am.

19 Q Now that you've read that do you have an
20 allegation today that you'd like to explain to the Court?

21 A Yes, ma'am, I don't see where prior
22 violence had anything to do with what happened that day.

23 Q Do you understand how that was beneficial
24 to you?

25 A No, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q Was that a strategy you had discussed with
2 your attorney?

3 A No, ma'am.

4 Q Now, Mr. Parker, we briefly talked about
5 the fact that you turned yourself in and you gave a
6 statement, but if you would turn to page two hundred
7 ninety-four, there a motion is actually made to suppress
8 that statement; is that correct?

9 A Yes, ma'am.

10 The Court: Which statement is that, please?

11 Ms. Blanchette: It's his statement made to law
12 enforcement.

13 The Court: And if you could, please, go ahead
14 and just tell me what the content of that statement was?

15 Ms. Blanchette: Your Honor, I was actually
16 going to go through the motion and some testimony from that
17 motion and then I can clarify further if you'd like?

18 The Court: Okay.

19 Ms. Blanchette: (Continuing)

20 Q Now your attorney made a very brief mention
21 that he was going to move to suppress the statement that
22 you made and the State called a number of witnesses; is
23 that correct?

24 A Yes, ma'am.

25 Q Now if you could look at page three hundred

Mr. Parker - Direct Examination by Ms. Blanchette

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1 one after Paul Glover testified for the State about how he
2 obtained that statement from you, your attorney is asked on
3 page three hundred and one at the very bottom starting on
4 page twenty-three, I'm sorry, line twenty-three through the
5 next page three hundred and two, whether he has any
6 witnesses or specific argument?

7 A Correct.

8 Q He's asked specifically by the Judge on
9 line twenty-three, three hundred and one, all right, you
10 can step down, thanks, all right, Mr. Goude, your motion is
11 to suppress you want to tell me the grounds?

12 A Right.

13 Q And what does your attorney say on lines
14 one and two?

15 A He said we have nothing else to present on
16 that motion, Judge.

17 Q So your attorney presented no grounds and
18 no witnesses on your behalf?

19 A Correct.

20 Q And that motion was as to the voluntary
21 nature of your statement?

22 A Yes, ma'am.

23 Q Okay --

24 The Court: What was the statement?

25 A It was a video recording.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: And what was in it?

2 A It was me confessing to the crime, pretty
3 much.

4 The Court: All right, ask the witness am I
5 going to have this video?

6 Ms. Blanchette: I do, I do not plan to
7 introduce it, Your Honor.

8 The Court: Did he confess?

9 Ms. Blanchette: They summarize it in the
10 transcript, I believe, Ms. Catoe -

11 The Court: Was he Mirandized?

12 Ms. Blanchette: We are arguing that it was in
13 fact not voluntary and that's what I was going to ---

14 The Court: Was he Mirandized, that's two
15 different things?

16 Ms. Blanchette: The police say that he was, and
17 Glover's testimony, I believe, here I could give you an
18 exact cite.

19 The Court: Would this witness say that he was
20 not; were you Mirandized?

21 A Yeah, I signed it but I really didn't
22 understand the whole, the whole throw of it.

23 The Court: Okay.

24 Ms. Blanchette: (Continuing)

25 Q Now you had a motion to suppress this video

Mr. Parker - Direct Examination by Ms. Blanchette 71

1 statement that was essentially a confession; is that
2 correct?

3 A Yes, ma'am.

4 Q And this was your attorney's opportunity to
5 keep this video and this information from the jury; is that
6 correct?

7 A Yes, ma'am.

8 Q And when your attorney had the opportunity
9 to suppress that statement he gave no grounds and he called
10 no witnesses; is that correct?

11 A That's correct.

12 Q Now, Mr. Parker, you ended up taking the
13 stand, what was one of the main reasons why you took the
14 stand?

15 A Because the witness statement made me look,
16 it made me look so bad that I figured I had to get on the
17 stand and justify myself.

18 Q And today we had your uncle testify about
19 the events that led up to you giving that statement, your
20 cousin has also ---

21 The Court: Wait just a second, I'm confused. I
22 know that I could probably get it straightened out later,
23 the way I understood it is that when his Uncle Roland and
24 his cousin Roland, and whoever else were there with him
25 when he turned himself in, that was a statement where he

Mr. Parker - Direct Examination by Ms. Blanchette

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1 said I didn't kidnap her and later on there was a video
2 statement, that's what I understood; is that not correct?

3 A Yes, sir.

4 The Court: That is correct?

5 A Yeah, that's how it happened but during all
6 that that's when the Investigator Hayward promised me that
7 if I made a statement that I would get lesser time and a
8 lower bond.

9 The Court: All right, go ahead.

10 Ms. Catoe: If I may just kind of object, Your
11 Honor. The State's position is it was not a confession, he
12 continued to say he did not kidnap her so just to put that
13 out.

14 The Court: That's why I was asking maybe it
15 would be helpful if somebody would tell me what was in the
16 statement. If it's on video, you know, if I have to make a
17 determination that if a proper objection had been made,
18 proper grounds had been stated, and witnesses called I
19 might, there might be a reasonable probability that the
20 proceedings would have had a different outcome because it
21 would have been ruled involuntary, and I apologize, Ms.
22 Blanchette, for interrupting you, but ---

23 Ms. Blanchette: No, that's fine, Your Honor.

24 The Court: --- when I'm listening to this he,
25 ya'll are talking about when you made your statement and

Mr. Parker - Direct Examination by Ms. Blanchette

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1 I've heard two different occasions of him having made a
2 statement. I'd like some clarification as to which one
3 you're talking about and when.

4 Ms. Blanchette: Yes, and, Your Honor, I'm
5 actually going to go through that motion hearing in a
6 little more detail to maybe help with that.

7 The Court: Okay.

8 Ms. Blanchette: (Continuing)

9 Q When Paul Glover testified beginning on
10 page 294, he testified about meeting with you on March 9th,
11 2006; is that correct?

12 A Yes, ma'am.

13 Q Did he tell the Court any of the
14 information about the conversations that took place between
15 yourself, your uncle, with your cousin present before he
16 took you in to take the video statement?

17 A No, ma'am.

18 Q Was any information conveyed about the
19 promises that he may have given to you or the verbal
20 statements or conversations that were made before the video
21 statement?

22 A No, ma'am, cause I talked to Paul Glover on
23 the, on the video, but I talked to Hayward before Paul
24 Glover even came in there.

25 Q And who is Hayward?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A Hayward is the investigator that I turned
2 myself into.

3 Q Okay, so Investigator Hayward was the one
4 you turned yourself into, you had this conversation ---

5 A Right.

6 Q --- that you testified about, your uncle
7 has testified, your cousin has testified about, then you
8 were taken into a second separate room for the video; is
9 that correct?

10 A Yes, ma'am.

11 Q Mr. Parker, did that conversation with
12 Investigator Hayward play into your reasons or was part of
13 reasoning for giving the video statement?

14 A Yes, it is.

15 Q Okay, now specifically Paul Glover
16 testifies on page two hundred ninety-seven that he told you
17 you'd be recorded?

18 A Right.

19 Q And he testified on page two hundred
20 ninety-eight that he gave you your Miranda warnings?

21 A Correct.

22 Q Do you contest either of those issues?

23 A No, ma'am.

24 Q What is it that you contest or why is it
25 that you feel that that encounter that ended in a video

Mr. Parker - Direct Examination by Ms. Blanchette

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1 statement was not voluntary on your part?

2 A Because when I went and turned myself in I
3 told Hayward I wanted a lawyer but after the statement he
4 had made he told my uncle that if I made a statement it
5 would help, it would help me on my case, it would help me
6 get a lower bond, and help me get lower time if I went to
7 Court, if I went that far, and that's the only reason I
8 made a statement was because he told me it would help me
9 out.

10 Q And your attorney didn't call Investigator
11 Hayward, didn't call you, your cousin, or your uncle to
12 testify about those events that led up to you giving the
13 recorded statement; is that correct?

14 A That's correct.

15 The Court: And help me out, the two young men
16 who testified in front of Judge John, did they talk about
17 the fact that he said he wanted a lawyer ---

18 Ms. Blanchette: The fact ---

19 The Court: --- cause I didn't hear, I didn't
20 hear that from Mr. Ward, Sr.?

21 Ms. Blanchette: Mr. Ward, Sr., according to my
22 recollection today, said that he did indicate that he
23 wanted a lawyer but they didn't have the funds to get him
24 one, nor did the police explain how he could get one, and I
25 can recall him to clarify that.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: That's okay.

2 Ms. Blanchette: (Continuing)

3 Q Now, Mr. Parker, just to tie all this
4 together, let's look at your trial testimony, page four
5 hundred eighteen?

6 The Court: All right, first of all I would like
7 to look at what his statement to the investigator was,
8 somebody show me that in the transcript?

9 Ms. Catoe: Your Honor, we were looking ---

10 The Court: It was evidently, it's unusual for a
11 motion to suppress to be made on page three hundred of a
12 transcript. Usually that's in the form of some type of
13 pretrial proceeding, so that's, that's an irregularity and
14 I don't, it's not fatal, but, somebody tell me where in this
15 transcript it is that either there's a record of the video
16 being played for the jury or there is a verbatim word for
17 word recitation of what Mr. Parker told the police in March
18 of 2006? If it didn't come in, if it didn't come in in
19 front of the jury it doesn't mean anything.

20 A The vic- ---

21 Ms. Blanchette: Your Honor, it was admitted ---

22 The Court: I'm not asking you, I'm asking your
23 lawyer.

24 A All right.

25 Ms. Blanchette: It's admitted on page three

Mr. Parker - Direct Examination by Ms. Blanchette

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1 hundred nineteen.

2 The Court: All right, so let's get to that
3 point and not move on into your next topic, all right, page
4 319.

5 Ms. Blanchette: On line seven the State moves
6 it into evidence.

7 The Court: Okay, and it was admitted in as a
8 video or was it read or what?

9 Ms. Blanchette: It says the taped statement and
10 there is no transcript and then the State just goes into
11 questions about it, so I would assume since I was not
12 present that it is just played for the jury.

13 The Court: Okay, all right, and you can
14 continue.

15 Ms. Blanchette: (Continuing)

16 Q Mr. Parker, after that statement is played
17 for the jury you decided to take the stand; is that
18 correct?

19 A Yes, ma'am.

20 Q Okay, and when you took the stand, if you
21 could turn to page four hundred eighteen, looking at lines
22 eleven through nine?

23 The Court: Say that number again?

24 Ms. Blanchette: Four hundred eighteen lines
25 eleven through nine.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: Okay.

2 Ms. Blanchette: (Continuing)

3 Q You explained to the jury about your uncle
4 bringing you into the police station; is that correct?

5 A Yes, ma'am.

6 Q But you did not explain that to the Court
7 during the suppression hearing; is that correct?

8 A No, ma'am.

9 Q If you could turn to page four hundred
10 forty-seven and look at lines seven through twenty-five?

11 The Court: Four hundred forty-seven?

12 Ms. Blanchette: Four hundred forty-seven, lines
13 seven through twenty-five.

14 Q (Continuing) There you specifically testify
15 they coerced me to give the statement and you go in detail
16 explaining that; you explained that you were actually
17 coerced by Hayward not Glover and that you told them you
18 wanted an attorney before you gave the statement?

19 A Right.

20 Q You're testifying to this in front of the
21 jury but did you testify to that in front of the Judge
22 during the suppression hearing?

23 A No, ma'am, I wasn't called as a witness.

24 Q And is it your understanding that you could
25 have been called as a witness at that motion hearing?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A It is now, yeah.

2 Q Did you discuss and prepare for that motion
3 hearing with your attorney, convey to him the information
4 you've talked about today and you stated at trial and
5 decide how that would be given to the Judge during that
6 suppression hearing?

7 A I told him on the phone about the situation
8 but he never, we never talked any further about it.

9 Q Did your attorney have notice of what
10 happened before you gave that statement?

11 A Yes, ma'am, he did.

12 Ms. Catoe: I object unless he's going to say he
13 told him something.

14 The Court: Did your attorney have notice of,
15 the question is did he have notice of what, that he was
16 coerced?

17 Ms. Blanchette: That the information that he's
18 testified to today at the trial, I don't remember my exact
19 words.

20 The Court: In other words are you asking him if
21 Mr. Goude had notice that the applicant was coerced?

22 Ms. Blanchette: I can rephrase that.

23 The Court: Okay, I think it's obvious ---

24 Q Did you ---

25 The Court: --- that he says he told Mr. Goude

Mr. Parker - Direct Examination by Ms. Blanchette

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1 that.

2 Ms. Blanchette: (Continuing)

3 Q Okay, I was just going to ask did you
4 give your attorney notice?

5 A Yes, ma'am.

6 Ms. Blanchette: Okay?

7 The Court: All right.

8 Ms. Blanchette: (Continuing)

9 Q Is there anything else regarding that
10 statement, the events that led up to the statement, and the
11 motion to suppress that statement that you would like to
12 explain to the Court today?

13 A Yeah, I feel if he had of called and
14 handled it then that the video tape and I, the video tape
15 would never got brought in and then if that had not got
16 brought in I would have never got on the stand.

17 Q And is that why you're alleging that it was
18 prejudicial to you in how he handled the suppression
19 hearing?

20 A Yes, ma'am.

21 Q Now you already said the victim in this
22 case was Ms. Belinda Mitchum; is that correct?

23 A That's correct.

24 Q Did you see anything at the trial that
25 caused you concern regarding the victim that you conveyed

Mr. Parker - Direct Examination by Ms. Blanchette

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1 to your attorney?

2 A Yes, as the Solicitor was asking her
3 questions she would, she was answering the questions that
4 before he even asked them, so he was, he told her to slow
5 down, wait, don't answer the question till ask you the
6 question, but they had got so jumbled up that he asked for
7 a break and during the break I seen her like looking over
8 some notes. I mean I didn't know what it was she was
9 looking over but it looked to me that she was reading notes
10 about what was fixing to be asked to her.

11 Q And if you look at page ---

12 The Court: Wait just a second.

13 Ms. Blanchette: Okay.

14 The Court: He needs to talk a little bit
15 slower. Could you go through that again? She was
16 testifying at trial, she was answering questions before
17 what?

18 The Witness: (Continuing)

19 A Before the Solicitor would ask her a
20 question she would answer it. So he slowed her down, he was
21 like stop, stop, let me ask you the question before you
22 answer the question and then they had got so mixed up they,
23 they weren't on the same page no more and so he asked for a
24 break and they took her to back room and when they opened
25 the door I seen her looking through papers with them.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: All right, that's different from
2 what he just said, you saw them looking through papers with
3 her?

4 A Right, I was sitting, I was sitting at, at
5 the desk and when somebody walked through the door the door
6 was open and she standing there flipping through like a
7 notebook and he was right above her.

8 The Court: This courtroom right here?

9 A No, not this courtroom but ---

10 The Court: Similar courtroom?

11 A Right, yes, sir.

12 The Court: And they opened what door and you
13 saw who doing what?

14 A I was sitting over there where my lawyer is
15 sitting and there was a door behind the Judge and that's
16 where she was at.

17 The Court: The door opened behind the Judge?

18 A Yeah, somebody had walked in and I seen her
19 looking through notes.

20 The Court: And they let you stay in the
21 courtroom during breaks?

22 A Yes, sir.

23 The Court: Okay, go ahead, I'm clear now.

24 Ms. Blanchette: Your Honor, out of respect for
25 the Court I don't have any further exhibits, do you mind if

Mr. Parker - Direct Examination by Ms. Blanchette

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1 I sit while I'm questioning?

2 The Court: No, not at all.

3 Ms. Blanchette: Okay, thank you, Your Honor.

4 Q (Continuing) Let me break that down for you
5 a little bit, Mr. Parker, cause you gave us a lot of
6 information there, if you look at pages sixty-two through
7 sixty-four of the transcript, specifically on page sixty-
8 three, is this what you're referring to where the Solicitor
9 is telling her you just need to say yes, you just need to
10 answer yes or no?

11 A Yes, yes.

12 Q And did you feel that the Solicitor was
13 leading her and assisting her with her answers at that time?

14 Ms. Catoe: Object to this leading question,
15 Your Honor.

16 The Court: Sustained, ask him just what did you
17 think.

18 Ms. Blanchette: Thank you, Your Honor.

19 Q (Continuing) Did you want your attorney to
20 make an objection?

21 A Yes, ma'am, I did.

22 Q And why?

23 A Because I felt that they already had, they
24 already had a list of questions that he was going to ask
25 and she already knew the answer before he asked them,

Mr. Parker - Direct Examination by Ms. Blanchette

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1 that's how it looked to me like it was everything was
2 already like a script pretty much.

3 Q And adding to that concern did you observe
4 her with your own eyes at a break going over some notes?

5 A Yes, ma'am.

6 Q Did you ever observe her going over those
7 notes with the Solicitor or was she just doing that by
8 herself?

9 A When they opened the door he was like
10 sitting in front of her while she was looking through
11 notes.

12 Q And who is he?

13 A The Solicitor.

14 Q Okay, did you convey those concerns to your
15 attorney?

16 A Yes, ma'am.

17 Q Did he bring those to the Court's
18 attention?

19 A No, ma'am.

20 Q Now if you could look at page one hundred
21 eighty-nine of your transcript, specifically if you could
22 look at lines two through nineteen on that page?

23 The Court: Page what?

24 Ms. Blanchette: One hundred eighty-nine, lines
25 two through nineteen.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 The Court: Okay.

2 Ms. Blanchette: (Continuing)

3 Q And also lines fourteen through twenty-
4 five, did your, did the Court there instruct your attorney
5 that he needed to read the kidnaping statute?

6 A Yes, ma'am.

7 Q Did he also indicate that he wanted them to
8 do some research on it so that your attorney understood
9 what the State had to prove so that you could be found
10 guilty of kidnaping?

11 A Yes, ma'am.

12 Q What was your reaction to the Court's
13 instructions on page one hundred eighty-nine?

14 A I felt like they felt my lawyer didn't know
15 what the statute was also so he was, he was trying to tell
16 him what the right way to go about doing things, I guess.

17 Q And does he go into the facts of what the
18 mense re for the crime of kidnaping is just merely
19 knowledge so it reads more like a strict liability statute;
20 is that what the Judge explains?

21 A Yes, ma'am.

22 The Court: That's not what he said. He said it
23 reads, almost reads like it's a strict liability statute
24 but it's not, so that's incomplete. He says it reads like
25 it is one but it's not.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: Yes, I'm sorry, Your Honor,
2 referring to lines eighteen through twenty-two, he explains
3 it's not strict liability.

4 The Court: Correct.

5 Ms. Blanchette: It has just a knowledge
6 requirement which is the intent element is knowledge, well
7 he says but simply it's just knowledge in this case.

8 The Court: Okay.

9 Ms. Blanchette: (Continuing)

10 Q Did you understand what the Judge was
11 saying?

12 A No, ma'am, I didn't.

13 Q Was that explanation of the statute ever
14 provided to you by your attorney either prior or during
15 your trial?

16 A No, ma'am.

17 Q Now if you could look at your testimony on
18 four hundred eighty, please? If you could look at lines
19 seventeen through twenty-two and I'll give you a second to
20 review those?

21 A All right.

22 Q There you're asked by the Solicitor whether
23 you lied when you said that you didn't think you did
24 anything wrong during your taped interview and what's your
25 ultimate answer there on lines twenty-one through twenty-

1 two?

2 A I didn't have the intention to, to do the,
3 do the crime.

4 Q So there you're speaking about whether or
5 not you had the intent to commit the crime of kidnaping?

6 A Correct.

7 Q So even after the Judge had explained to
8 your jury, to your, I'm sorry, even after the Judge had
9 explained to your attorney that the requirement was merely
10 knowledge not criminal intent, you testified that you did
11 not have the intent; so did you understand what the State
12 had to prove?

13 A No, ma'am.

14 Q Now let's talk a little bit about the
15 witnesses that were called on your behalf; you've already
16 explained that you decided to testify, were there other
17 reasons why you decided to testify?

18 A No, I was based on that video that was
19 shown.

20 Q And did your attorney prepare you to
21 testify?

22 A No, ma'am.

23 Q Now the Court will have the opportunity as
24 he has the transcript to review your testimony so I'm not
25 going to go over everything you said with you today, I'll

Mr. Parker - Direct Examination by Ms. Blanchette

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1 point out a couple of things, but you made a number of
2 negative admissions that were not pertinent to this case?

3 A Right.

4 Q Why did you do that, Mr. Parker?

5 A Because I just felt that the truth needed
6 to come out but the question that I was asked I was just
7 answering the questions that was asked to me.

8 Q Did you prepare with your attorney before
9 taking the stand?

10 A No, ma'am, I didn't.

11 Q Do you feel that your testimony was
12 hindered by your lack of preparation?

13 A Yes, ma'am, it was.

14 Q Is there anything further you'd like to
15 explain on that point about preparation for your testimony?

16 A I felt that if we had at least talked about
17 it a little bit I would have had a better understanding of
18 what was about to happen.

19 Q Now as I said I'm going to just highlight a
20 couple of the things you testified to and have you address
21 those with the Court today?

22 A All right.

23 Q If you could look at page three hundred
24 fifty-two, lines seventeen through twenty-five, and it's
25 actually pages three hundred fifty-two, I believe, through

Mr. Parker - Direct Examination by Ms. Blanchette

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1 three hundred fifty-three, there do you admit fighting,
2 arguing with the victim and admitting that you were both on
3 drugs?

4 A Yes, ma'am, I did.

5 Q If you could look at page four hundred
6 fifty-six, lines three through four, when asked did you
7 cause these injuries what's your response on line four?

8 A Yes, no, I didn't do it intentionally.

9 Q So again you're talking about having the
10 intent?

11 A Right.

12 Q Is that correct?

13 A Yes, ma'am.

14 The Court: That's page, what, line -

15 A Fifty-six.

16 Ms. Blanchette: Four hundred fifty-six line
17 three through four.

18 The Court: Are injuries part of kidnaping?

19 Ms. Blanchette: I believe the State tied them
20 in as part of their theory that she was ---

21 The Court: But there was no separate abwik or
22 abhan?

23 Ms. Blanchette: There was not, it was just
24 simply burglary first and kidnaping, Your Honor.

25 The Court: Okay.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: (Continuing)

2 Q Now let's, is there any other specific
3 instances of things you want to explain to the Court that
4 you testified to as a result of your lack of preparation?

5 A No, but that, this really was explaining a
6 prior violent act that happened prior to this, it had
7 nothing to do with the trial or, or the kidnaping or
8 anything, but that's what, that's what that was talking
9 about. He had asked me about like how did, how did the
10 accident happen in the house, that's what they was talking
11 about.

12 Q And there he's speaking on page four
13 hundred fifty-five about the fact that she was taped up as
14 part of the kidnaping and received injuries and he's asking
15 you about those injuries; is that correct?

16 A Yes, ma'am.

17 Q Okay, now if you could turn to page four
18 hundred twenty-seven of your testimony?

19 The Court: Four hundred twenty-seven?

20 Ms. Blanchette: Yes.

21 Q There you're examined outside the jury's
22 presence; do you recall that?

23 A Yes, ma'am.

24 Q And if you could just summarize for us
25 today and then I'll go over a little bit of the testimony,

Mr. Parker - Direct Examination by Ms. Blanchette

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1 what was it that you wanted to testify about?

2 The Court: Okay, help me out here?

3 Ms. Blanchette: Yes.

4 The Court: Four hundred twenty-seven is what
5 now?

6 Ms. Blanchette: four hundred twenty-seven is
7 the beginning of a proffer outside the presence of the
8 jury.

9 The Court: Proffer with Mr. Parker as the
10 witness?

11 Ms. Blanchette: Uh-huh.

12 The Court: Okay.

13 Ms. Blanchette: (Continuing)

14 Q What information was it that you
15 wanted to tell the jury that the Judge had to hear outside
16 the presence of the jury?

17 A That went back to the phone calls, some of
18 the things she had said to me over the phone about how she
19 was going to change her story and she was going to try and
20 help me and work with me, like be on my side and tell them,
21 like what really happened, and that she said that she tried
22 to drop the charges but the Solicitor said that if she
23 dropped the charges and changed her story that they would
24 give her time and take her kids from her.

25 Q Okay, and you explained that to the Court

Mr. Parker - Direct Examination by Ms. Blanchette

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1 outside the presence of the jury and then if you turn to
2 page four hundred twenty-nine beginning on line two, page
3 four hundred twenty-nine, Solicitor Modica -

4 The Court: You got to go a little bit slower.

5 Ms. Blanchette: Okay.

6 The Court: Cause I'm trying to flip at the same
7 time and you know where you're going and I don't, so we've
8 gone from four hundred twenty-seven to page?

9 Ms. Blanchette: Four hundred twenty-nine.

10 The Court: Okay, and this is a proffer of his
11 testimony on the issue of what, the admissibility of what?

12 Ms. Blanchette: Whether or not the Solicitor
13 had threatened the victim.

14 The Court: Okay, I got you.

15 Ms. Blanchette: (Continuing)

16 Q And in response to your allegation
17 that the Solicitor had threatened the victim if she were to
18 change her story Solicitor Modica responded on page four
19 hundred twenty line, I'm sorry, four hundred twenty-nine,
20 line two, that the conversation never occurred and he had
21 never threatened her; is that correct?

22 A Yes, ma'am.

23 Q But the Court did allow, if you turn to
24 page four hundred thirty-two, beginning at the bottom, I'm
25 sorry, page four hundred thirty-two lines eleven through

Mr. Parker - Direct Examination by Ms. Blanchette

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1 sixteen, you were able to explain that briefly to the jury;
2 is that correct?

3 A Yes, ma'am.

4 Q Now what else had you asked your attorney
5 to do to help support that allegation?

6 A Get the phone records.

7 Q Okay, and he did not do that and we cannot
8 get those at this time; is that correct?

9 A That's correct.

10 Q And what is your allegation regarding his
11 assistance with getting those phone records?

12 A If he had of done it the whole outcome of
13 my trial would have been different. I wouldn't have to get
14 on the stand and all the, all the, everything that she had
15 said I could have played the tape and showed that she
16 wasn't telling the truth on the stand.

17 Q And if you could turn to page four hundred
18 forty-four and if you could look at lines one through
19 thirteen, there you actually explained that you don't have
20 any phone records to help support your side of this story?

21 A That's correct.

22 Q Is there anything else regarding the
23 alleged threat by the Solicitor and that phone call that
24 you would like to tell the Court about today?

25 A No, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q If you could turn to page four hundred
2 ninety-one, please, we're looking at page four hundred
3 ninety-one the bottom of the page lines twenty-four through
4 twenty-five, there the Solicitor asks you about the victim
5 being next to him at the bond hearing; is that correct?

6 A Yes, ma'am.

7 Q If you could turn, please, to page four
8 hundred ninety-three?

9 The Court: I missed, the victim being next to
10 who at the bond hearing, you said him?

11 Ms. Blanchette: The Solicitor.

12 The Court: Not the defendant?

13 Ms. Blanchette: No, the Solicitor asked about
14 the victim standing next to him being the Solicitor, at the
15 bond hearing.

16 The Court: Okay, all right.

17 Q If you could turn to page four hundred
18 ninety-three lines twenty-three through twenty-five,
19 through a question does he inform the jury that he told the
20 Judge that the victim was deathly afraid of you at the bond
21 hearing?

22 A Yes, ma'am.

23 Q Did you know that he could testify about
24 what he told the Judge, he being the Solicitor, through a
25 question he asked you at trial?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A No, ma'am.

2 Q Did your attorney object when the Solicitor
3 essentially testified about what occurred and what he said
4 at the bond hearing through cross examination of you?

5 A No, ma'am.

6 Q And are you alleging today that your
7 attorney should have objected?

8 A Yes, ma'am.

9 Q Did you ever have the opportunity to
10 confront the Solicitor and ask him about that statement or
11 question him during your trial?

12 A No, ma'am, I didn't, I believe I tried
13 somewhere in there and the Judge told me I couldn't do
14 that.

15 Q Is there anything else regarding your
16 testimony or any events that took place during your
17 testimony that you would like to tell the Court about
18 today?

19 A No, ma'am.

20 Q Now your mother testified and who is that;
21 who's your mother?

22 A Sherry Parker.

23 Q Okay, and her testimony begins on page five
24 hundred and six; is that correct?

25 The Court: All right, since we've got to a

Mr. Parker - Direct Examination by Ms. Blanchette

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1 different point I'm going to take a recess at this point.
2 We've been in here for about an hour and a half, any
3 objection if we adjourn at this time for a few minutes?

4 Ms. Blanchette: No objection, Your Honor.

5 The Court: Ms. Catoe?

6 Ms. Catoe: No, Your Honor.

7 The Court: All right, sir, you can step down,
8 you may not discuss your testimony.

9 A I can leave this right here?

10 The Court: Sir?

11 A I can leave this right here?

12 The Court: Yes, sir, leave all the papers up
13 there.

14 (Whereupon, a recess was taken and the following
15 takes place on the record after the recess.)

16 Ms. Blanchette: (Continuing Direct Examination
17 of Nicholas Parker)

18 Q Mr. Parker, before the break you indicated
19 that your mother testified as part of the defense; is that
20 correct?

21 A Yes, ma'am.

22 Q And if you could look at page five hundred
23 forty-seven through five hundred forty-nine, did a proffer
24 take place in which your mother testified outside the
25 presence of the jury about telling the victim to make up a

Mr. Parker - Direct Examination by Ms. Blanchette

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1 kidnaping story?

2 A Yes, ma'am, yes, ma'am.

3 Q If you could look specifically at page five
4 hundred forty-nine, line thirteen, does the Judge rule that
5 it will not be admitted because it's not relevant?

6 A Yes, ma'am.

7 Q And if you could specifically look at lines
8 fifteen through sixteen, why does he say it is not
9 relevant?

10 A It says the question is whether the jury is
11 going to consider it to be man, it says manslaughter, but I
12 don't think it's relevant that he, she, this lady coached
13 her into fabricating a kidnaping.

14 Q I'm sorry, if you could look at lines
15 fourteen through sixteen, why does he say it's not
16 relevant?

17 A It's not fabricated; there is no evidence
18 whatsoever that this is fabricated.

19 Q And if you could go on through line
20 sixteen?

21 A It says, I mean your client has admitted
22 that he, he did all this, the question is whether the jury
23 is going to consider it to be manslaughter but I don't
24 think it's relevant that he, she, this lady coached her to
25 fabricating the kidnaping.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q So on line 16 the Court indicates or the
2 Court is clued in by, from what he's heard so far that
3 you've admitted that you committed this crime?

4 A Correct.

5 Q And did you take the stand to admit you had
6 committed this crime or why did you take the stand?

7 A I took the stand because I felt that the
8 story that was being told wasn't true.

9 Q And does the Court's comment here in any
10 way summarize how your defense was put up for you?

11 A Yes, ma'am, it was poor.

12 Q Now your mother also testified on page five
13 hundred thirty-four, lines fifteen through eighteen, that
14 she in connection with this case lied to the police because
15 she had outstanding warrants?

16 A Correct.

17 Q That's page five hundred thirty-four, lines
18 fifteen through eighteen, was that information helpful to
19 your case?

20 A No, ma'am, it wasn't.

21 Q And that information was given to the jury
22 as part of your defense; is that correct?

23 A Yes, ma'am.

24 The Court: The transcript is correct in
25 referencing that this is under cross examination by the

Mr. Parker - Direct Examination by Ms. Blanchette

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1 State?

2 Ms. Blanchette: It is, Your Honor.

3 The Court: All right.

4 Ms. Blanchette: (Continuing)

5 Q Now your grandmother was also called to the
6 stand and what's her name?

7 A Shirley Ward.

8 Q And was your grandmother also charged in
9 connection with this case?

10 A Yes, ma'am.

11 Q Okay, and just to briefly summarize her
12 testimony beginning on page five hundred thirty-four
13 through page six hundred and five, she testified about it
14 being her idea that you and the victim come and go through
15 the boxes?

16 The Court: Page what?

17 Ms. Blanchette: Five hundred thirty-four
18 through page six hundred and five.

19 The Court: Okay.

20 Ms. Blanchette: (Continuing)

21 Q And she testified on page five hundred
22 thirty, I'm sorry -- Your Honor, that would be five hundred
23 seventy through page six hundred and five.

24 The Court: Okay, that's where I was confused,
25 all right.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Ms. Blanchette: (Continuing)

2 Q Beginning on page five hundred seventy she
3 testified that it was her idea that the victim come out to
4 the house and go through the boxes; is that correct?

5 A Yes, ma'am.

6 Q On page five hundred eighty-eight she
7 testifies about allowing the victim to use the phone and
8 actually calling the victim's mother herself?

9 A Correct.

10 Q Is that correct?

11 A Yes, ma'am.

12 Q On page five hundred ninety-nine she
13 testifies about seeing the victim kiss you after you
14 dropped her off?

15 A Yes, ma'am.

16 Q On page six hundred and one she testifies
17 about seeing the victim four times afterwards and having no
18 problems with her; is that correct?

19 A Yes, ma'am.

20 The Court: Page what again?

21 Ms. Blanchette: Six hundred and one.

22 Q (Continuing) And then again on page Six
23 hundred and five she explains that no one kept the victim
24 from using the phone at the house; is that correct?

25 A That's correct.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q Now all that information was helpful to
2 you; is that correct?

3 A Yes, ma'am.

4 Q And was that testimony the reason you
5 wanted your grandmother called?

6 A Yes, it is.

7 Q Now if you turn to page six hundred thirty-
8 two -

9 The Court: Did the jury hear that testimony?

10 Ms. Blanchette: They did, Your Honor.

11 The Court: Okay.

12 Ms. Blanchette: (Continuing)

13 Q If you turn to page six hundred thirty-two
14 on cross examination on lines fourteen through twenty-one
15 she also explains about how your mother lied to police; is
16 that correct?

17 A Yes, ma'am.

18 Q And then on page six hundred thirty-one
19 lines twenty through twenty-two, she informed the jury that
20 you and all your brothers typically run from police?

21 A Yes, ma'am.

22 Q And was that information helpful to you?

23 A No, ma'am, it wasn't.

24 Q Okay, do you feel that that negative
25 information impacted your grandmother's impact on the jury?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A Yes, ma'am.

2 Q Is there anything else regarding your
3 grandmother's testimony that you would like to tell the
4 Court about today?

5 A No, ma'am.

6 Q Now, Mr. Parker, your grandmother was
7 charged and was she appointed an attorney?

8 A Yes, ma'am.

9 Q And who was that; do you know his name?

10 A Richard Colvin.

11 Q Okay, if you could turn to page 608 with
12 me, on page six hundred and eight Attorney Colvin brings a
13 matter on the record that he says he discussed in chambers
14 with the Judge and that your defense attorney brushed him
15 off so he feels a duty to put it on the record?

16 A Yes, ma'am.

17 Q Is that what the transcript reflects?

18 A Yes, ma'am, it does.

19 The Court: Page six hundred and eight line?

20 Ms. Blanchette: Beginning on line thirteen.

21 The Court: All right, let me read that, was the
22 grandmother being tried at the same time?

23 Ms. Blanchette: No, she was not. She was just
24 present as a witness but she had pending charges so her
25 attorney was present.

Mr. Parker - Direct Examination by Ms. Blanchette 103

1 The Court: And what, could you ask him what the
2 issue was about so I can --

3 Ms. Catoe: Your Honor, the State would have no
4 objection if Ms. Blanchette just wants to summarize this
5 allegation without asking the questions.

6 The Court: If you'd do that, that would help.

7 Ms. Blanchette: I'd be happy to, Your Honor.
8 Looking at pages six hundred and eight through page six
9 hundred seventeen is where the issue arises in the
10 transcript.

11 The Court: Okay.

12 Ms. Blanchette: I'll summarize the issue and
13 then I'll ask my client questions -

14 The Court: Okay.

15 Ms. Blanchette: --- unless there's any
16 objection. Attorney Colvin puts on the record that he saw
17 solicitor, and I hope I say this correctly, Biagiani,
18 talking to Officer Hayward outside the bathroom regarding
19 potential testimony. Attorney Colvin went to them and said
20 that there was a sequestration order and the Solicitor
21 informed him that it was okay because the officer was just
22 going to be a reply witness. He indicated to the Court
23 specifically on page six hundred and nine that then he went
24 up to his client, Ms. Ward, and offered her water and the
25 Solicitor accosted him about talking to a witness.

Mr. Parker - Direct Examination by Ms. Blanchette 104

1 The Court: The same, the same, is Biagiani, am
2 I know how to say it?

3 Ms. Catoe: It was Dori Biagiani, I believe. He
4 -

5 Ms. Blanchette: Biagiani.

6 The Court: Okay, so the same Solicitor, not a
7 different Solicitor?

8 Ms. Blanchette: Yes, he says, she, so I assume
9 he's, he's speaking of her.

10 The Court: All right.

11 Ms. Blanchette: And then when asked, and if I
12 understand I'm saying this wrong, Matthew Modica; is that
13 correct?

14 Ms. Catoe: Modica.

15 Ms. Blanchette: Modica said that he was
16 surprised to hear the defendant testify about being coerced
17 by police and it forced him to have to talk to Investigator
18 Hayward because this was new information that should have
19 come up in the Jackson v. Deno and it did not. So it was a
20 matter that they were having to address with Officer
21 Hayward at that time since it wasn't properly brought out
22 at the suppression hearing he explained to the Court that
23 they had to talk to the witness about it now because it was
24 a surprise that the Defendant is talking about this at his,
25 in his testimony and didn't, it wasn't addressed in the

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Jackson v. Deno hearing.

2 The Court: Okay, all right, and then, and then
3 as far as Mr. Goude is concerned the issue is should he
4 have argued more vehemently to the Judge?

5 Ms. Blanchette: Well the Court actually
6 indicated on page six hundred twelve through six hundred
7 thirteen that there was no need for action but in the
8 future they should ask his permission before speaking to a
9 witness even if it's a reply witness cause there was a
10 sequestration order in place.

11 The Court: All right.

12 Ms. Blanchette: Attorney Colvin pushed the
13 issue further on page six hundred thirteen and said, no, I
14 want to know if it's right or wrong, this Court needs to
15 make a ruling on this matter. Again the Judge reiterated
16 on page six hundred fifteen just run it by me in the future
17 before you talk to a witness, and then on page six hundred
18 seventeen, lines four through nine, defense counsel is
19 given his opportunity to address this matter, potentially
20 make an argument, move for a mistrial regarding the
21 violation of sequestration order and he indicates he has no
22 comment.

23 The Court: And that is an issue in the PCR
24 because he didn't make a comment?

25 Ms. Blanchette: He did not first of all

Mr. Parker - Direct Examination by Ms. Blanchette 106

1 attorney Colvin says he brushed him off and would not bring
2 it to the Court's attention so attorney Colvin did and then
3 he made no comment and, therefore, did not get a proper
4 ruling from the Court and/or preserve the issue for
5 appellate review.

6 The Court: All right.

7 Ms. Blanchette: And that's strictly a legal
8 issue. I, I don't see any reason to ask my client any
9 questions on that unless the Court needs further
10 clarification.

11 The Court: Would you not agree, though, that
12 the sequestration order is Judge Haye's order and if he, if
13 he believes there's been a violation it really wouldn't
14 matter what somebody thinks, if he's going to lay the law
15 down on it he's going to lay the law down on it.

16 Ms. Blanchette: Right, but here his attorney is
17 the person representing him and ensuring that the
18 adversarial process is correct and when asked his attorney
19 had no comment on the situation.

20 The Court: Okay.

21 Ms. Blanchette: But the other attorney thought
22 it was such an important matter that even though he was not
23 the attorney representing him he put it on the record.

24 The Court: All right.

25 Ms. Blanchette: (Continuing)

Mr. Parker - Direct Examination by Ms. Blanchette 107

1 Q If you could turn to page six hundred
2 sixty-four, lines three through five. Does your attorney
3 give any other grounds besides two lines regarding
4 insufficiency of the evidence for his directed verdict
5 argument?

6 A No, ma'am.

7 Q And what is your allegation regarding his
8 directed verdict argument?

9 A That he wasn't prepared or he, he really
10 didn't know what was going on, like he, he didn't have
11 nothing to say against it, like he wasn't even representing
12 me like he should have been.

13 Q If you could look at his closing argument
14 beginning at the top of page six hundred seventy he, he
15 goes into an explanation about Iraq and Muslims, guns and
16 gang members; did that have anything to do with your case?

17 A No, ma'am.

18 Q If you could look at page six hundred
19 eighty-six, please?

20 The Court: Guns, gang members, Iraq and
21 Afghanistan?

22 Ms. Blanchette: And Muslims.

23 The Court: Six hundred eighty-six?

24 Ms. Blanchette: six hundred eighty-six, lines
25 three through eight.

Mr. Parker - Direct Examination by Ms. Blanchette

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1 Q (Continuing) There does he make comments
2 about someone having to be stupid to tape up their
3 girlfriend?

4 A Yes.

5 Q In this manner?

6 A Yes, ma'am.

7 Q What was your reaction and what is it you
8 want to explain to the Court about those comments made
9 during your attorney's closing arguments?

10 A I mean I don't understand why he would even
11 say anything like that because we're not on trial to figure
12 if I'm smart or if I'm stupid, I'm slow. We're in Court to
13 find out what really happened and for him to represent me
14 on a kidnaping, not my intelligence.

15 The Court: May I ask a question? Was the
16 testimony from the videotape or from this witness during
17 the trial that he did tape her?

18 Ms. Blanchette: There was actually a section
19 that I refer to on cross examination where he admitted
20 causing the injuries from the tape.

21 The Court: Did he admit taping her?

22 Ms. Blanchette: I would say it would be proper
23 from the testimony to say, yes.

24 Q (Continuing) Mr. Parker, would you agree?

25 A Yes, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette 109

1 The Court: Okay, all right, so the context of
2 the closing argument is a lawyer said who would be so
3 stupid as to tape up their girlfriend?

4 Ms. Blanchette: Correct, Your Honor.

5 The Court: All right, I just wanted to make
6 sure I was aware of the context, thank you.

7 Ms. Blanchette: Uh-huh.

8 Q (Continuing) If you could look at page six
9 hundred ninety-four beginning on line eighteen through line
10 eleven on the next page, and the transcript will properly
11 reflect it, but just to summarize does he explain that if
12 the victim thought for one second she was being kidnaped
13 that's a kidnaping in South Carolina?

14 A Right.

15 Q The State has more and better lawyers but
16 he's doing his best, in doing his best did he explain to
17 you that exact line there, that if she thought for one
18 second she was being kidnaped she was kidnaped?

19 A No, ma'am, but if he had said to me just
20 like that then I understood everything a lot better.

21 Q So the first time you understood that is in
22 his closing arguments?

23 A Yes, ma'am.

24 Q After you had already testified that you
25 didn't have the intent to do that to kidnap that person

Mr. Parker - Direct Examination by Ms. Blanchette

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1 that's why you were not guilty?

2 A Correct.

3 Ms. Catoe: I think I need to interpose an
4 objection here because as I recall it that testimony is
5 counsel saying here's what the State is going to argue to
6 you, so I just want to add that in for whatever it's worth,
7 Your Honor.

8 The Court: Is that correct, Ms. Blanchette?

9 Ms. Blanchette: Your Honor, I did say that
10 lines eighteen through six hundred ninety-four through six
11 hundred ninety-five would speak for themselves, but he does
12 make the statement that if he thought, if she thought for
13 one second she was being kidnaped that's a kidnaping.

14 The Court: Well he's saying that's what the
15 State would say.

16 Ms. Blanchette: Correct, and I'm asking, the
17 context I won't disagree with, but I'm asking my client if
18 he understood that prior to his attorney saying that in
19 closing.

20 The Court: Is that a correct statement of the
21 law that, that if, if you take me outside into the parking
22 lot and I think for one second that you're kidnaping me, is
23 that a kidnaping?

24 Ms. Blanchette: Your Honor, I refer to State v.
25 Jefferies which is found at 316 S.C. 13.

Mr. Parker - Direct Examination by Ms. Blanchette 111

1 The Court: What does it say?

2 Ms. Blanchette: If I could just have one second
3 so I respond correctly?

4 The Court: All right.

5 Ms. Blanchette: In that case the issue was the
6 defendant was alleging that he didn't know there was a
7 child in the vehicle so he had no intent to kidnap the
8 child and in the Jefferies case the South Carolina Supreme
9 Court explained that intent is not necessary, the
10 requirement is merely knowledge, and I believe they made a
11 very good ---

12 The Court: Knowledge on the part of --

13 Ms. Blanchette: The victim.

14 The Court: Okay.

15 Ms. Catoe: I'm not sure that's correct, Your
16 Honor, cause how would a baby know that they're kidnaped?

17 Ms. Blanchette: And they actually go into a
18 infant statute in this case but I thought there was a good
19 ---

20 The Court: It says the mense re is knowledge,
21 the mense re is always the defendant's mense re, so I just
22 want to, I'm aware of the context that you're asking the
23 witness questions so I apologize for getting off base with,
24 with that, so you can go ahead and I apologize for
25 interrupting.

Mr. Parker - Direct Examination by Ms. Blanchette 112

1 Ms. Blanchette: Your Honor, I may be able to
2 better address that. I have a couple of cases at the end
3 of argument, if I could just leave that till then and I'll
4 just finish up with his questions, but I'll make sure to
5 respond to that for Your Honor.

6 The Court: All right.

7 Ms. Blanchette: (Continuing)

8 Q Now let's look at the State's closing
9 argument, if you could look at page seven hundred, lines
10 two through essentially the whole page, twenty-four, there
11 they argue the fact that you had admitted this crime; is
12 that correct?

13 A Yes, ma'am.

14 Q And then if you could look at page seven
15 hundred and three, lines seven through twenty-three, and
16 specifically lines twenty-one through twenty-three, does
17 the State go into the fact that she's in fact a criminal
18 domestic violence victim?

19 A Yes, ma'am.

20 Q And she would be the victim; is that
21 correct?

22 A That's correct.

23 Q Had you been charged with any criminal
24 domestic violence?

25 A No, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette 113

1 Q Did your attorney object to the State's
2 comments there?

3 A No, ma'am.

4 Q If you could look at page seven hundred and
5 ten through seven hundred eleven of the State closing
6 argument, there the State repeatedly request that the jury
7 end this nightmare for her, that it's been a one year
8 nightmare for the victim; does your attorney make any
9 objections about arousing the passions and prejudices of
10 the jury?

11 A No, ma'am.

12 Q If you could turn back to page six hundred
13 sixty-seven, lines sixteen through twenty-four, there your
14 attorney ---

15 The Court: Sixty-six -

16 Ms. Blanchette: Six hundred sixty-seven, line
17 sixteen through twenty-four.

18 Q There your attorney asked for the lesser
19 included of assault and battery and accidental injury; what
20 was the Court's response?

21 A He asked if do you want me to charge
22 littering for leaving the tape around, too.

23 Q Okay, and did you have concerns that your
24 attorney's request were being made properly or taken
25 seriously?

Mr. Parker - Direct Examination by Ms. Blanchette

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1 A No, ma'am.

2 Q When you say, no, ma'am, could you explain
3 that?

4 A I mean that I felt that they weren't being
5 taken serious.

6 Q And let's look at page 724, and this may
7 answer the Court's earlier question --

8 The Court: Page?

9 Ms. Blanchette: Seven hundred twenty-four.

10 The Court: Okay, this is back to the State's
11 closing?

12 Ms. Blanchette: This is the Judge's charge.

13 The Court: Okay.

14 Ms. Blanchette: (Continuing)

15 Q And there and I'll read this because I
16 think this will clarify some of the questions we had,
17 beginning on line 2 the Judge says in his charge, there's a
18 different, different mental state required to be proven and
19 in the hierarchy of mental states it's a lesser mental
20 state than criminal intent. The State must prove as, and
21 mine is cut off there, the State must prove as the
22 kidnaping was ---

23 The Court: As to, I think it says as to.

24 Ms. Blanchette: As to?

25 The Court: Yes, ma'am.

Mr. Parker - Direct Examination by Ms. Blanchette 115

1 Ms. Blanchette: As to the kidnaping that the
2 defendant acted with knowledge, that is that he was aware
3 that the conduct in which he was engaged was practically
4 certain to affect or constitute kidnaping.

5 The Court: As I have defined.

6 Ms. Blanchette: (Continuing)

7 Q As I have defined it, whatever his desire
8 was as to the result of his conduct. This is the knowledge
9 requirement that I kept asking you about, Mr. Parker, and
10 the Court says here that you have had to act with the
11 knowledge and be aware that your conduct was practically
12 certain to affect or constitute a kidnaping; did you
13 understand that was the requirement going into trial when
14 you testified at trial, and throughout your trial?

15 A No, ma'am.

16 Q And as a result do you have an allegation
17 regarding your attorney's effectiveness in representing
18 you?

19 A Yes, if I had understood that then
20 everything would have been different. I probably wouldn't
21 have got on the stand; I probably would have said things
22 different, in a different light. I would have seen the
23 whole situation different, in a different manner.

24 Q If you had been explained what the Judge
25 explained right there regarding kidnaping in his charge

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1 when there was a plea on the table would you have
2 considered that plea differently?

3 A Yes, ma'am, I would have.

4 Q If you would have been shown the State's
5 evidence against you in preparation for the case and
6 understood what the Judge said here in his jury charge,
7 would you have considered proceeding to trial differently?

8 A Yes, ma'am, I would have.

9 Q Is there anything else regarding that
10 you'd like to explain because you have to carry the burden
11 of that, Mr. Parker?

12 A That if, if I had of knew what I know now
13 then about what was the intent and what's the knowledge
14 then I probably, I probably would have took the plea or
15 either when I went on the stand I would have said things
16 differently. I wouldn't have just, just give everything
17 out like that, like stuff that it should have never been
18 said I would have never said it.

19 Q When you took the stand did you understand
20 the law and what the State had to prove to find you guilty?

21 A No, not at the time I didn't.

22 Q The jury deliberated in your case for only
23 thirty-five minutes; is that correct?

24 A Yes, ma'am.

25 Q If you could look at page seven hundred

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1 thirty-one, if you could look at line eight through
2 sixteen, does it indicate there that the extra juror went
3 back with the jury?

4 A Yes, ma'am.

5 Q If you could look at page seven hundred
6 thirty-three, lines two through five, when the foreperson
7 is asked if the extra juror participated, what is his
8 response?

9 A He said he may have said a few words
10 particularly when we were discussing the second charge, but
11 I'm not sure that he participated at all in the first
12 charge that we deliberated on.

13 Q So the foreperson admits that the extra
14 juror did participate in their discussions; is that
15 correct?

16 A Yes, ma'am.

17 The Court: Read the rest of it, ma'am, the
18 first charge was kidnaping.

19 Ms. Blanchette: That is correct.

20 The Court: And he said he didn't participate on
21 that one at all.

22 Ms. Blanchette: That is correct, Your Honor.

23 The Court: Okay, all right.

24 Ms. Blanchette: (Continuing)

25 Q In the context of what the, what the

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1 transcript says, we don't want to take it out of context,
2 but he did admit that the jury was part of their
3 discussions; is that correct?

4 A Yes, ma'am.

5 Q Did your attorney make any type of motion
6 on your behalf?

7 A No, ma'am, he didn't.

8 Q If we could look at the mitigation section
9 of your trial page seven hundred thirty-eight, lines four
10 through six, that's page seven hundred thirty-nine, lines
11 four through six, here your attorney has the opportunity to
12 speak to the Judge on your behalf for a lesser sentence and
13 does he in fact tell the Judge if it were him he'd rather
14 have my hands and feet duct taped and driven to Summerville
15 and somebody help me load my own stuff and the Court cuts
16 him off; is that correct?

17 A Yes, ma'am.

18 The Court: All right, this is page seven
19 hundred thirty-eight?

20 Ms. Blanchette: Seven hundred thirty-eight,
21 beginning on lines three through the Court's response on
22 line eight.

23 The Court: Okay.

24 Ms. Blanchette: (Continuing)

25 Q Mr. Parker, is there anything regarding the

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1 preparation and investigation of your attorney and his
2 performance at trial on your behalf that you'd like to
3 bring to the Court's attention today?

4 A No, ma'am, I just felt if he had of
5 prepared me a little bit better then I think the outcome
6 would have been different.

7 Q And did you have an appeal on this case?

8 A Yes, ma'am, I did.

9 Q And that was an Anders brief submitted by
10 Katherine Hudgins of the Office of Appellate Defense?

11 A Yes, ma'am.

12 Q Did you a pro se brief?

13 A No, ma'am, I didn't.

14 Q Okay, and she argued about the fact that
15 you were on the sex registry, and she argued that the Judge
16 erred by not giving a false imprisonment charge; is that
17 correct?

18 A Yes, ma'am.

19 The Court: Is this Appellate PCR petition, too,
20 today?

21 Ms. Blanchette: Yes, issue number fourteen on
22 the amendment is failure to raise all meritorious issues.

23 The Court: Okay.

24 Ms. Blanchette: (Continuing)

25 Q She did not raise any other issues on your

Mr. Parker - Direct Examination by Ms. Blanchette

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1 behalf; is that correct?

2 A That's correct.

3 Q And your appeal was dismissed pursuant to
4 Anders?

5 A Yes, ma'am.

6 Q And just specifically she did not raise any
7 issues regarding the Jackson v. Deno hearing, the extra
8 juror even though it was not objected to by counsel or the
9 situation that I spoke to the Judge about that Attorney
10 Colvin brought to the Court's attention?

11 A That's correct.

12 Q Okay, Mr. Parker, I've gone over everything
13 that we've previously gone over, you're very aware of the
14 amendments I filed on your behalf; is there anything else
15 that you would like to tell the Court today as to why
16 you're alleging your attorney was ineffective on both your
17 trial and your appeal and why you deserve a new trial?

18 A No, ma'am.

19 Ms. Blanchette: I have no further questions of
20 this witness.

21 The Court: Okay, Ms. Catoe?

22 Ms. Catoe: May it please the Court?

23 The Court: Yes, ma'am, be sure that if you
24 refer to page and line numbers that you let me catch up.

25 Ms. Catoe: Yes, Your Honor.

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1 The Court: And the witness, too.

2 Cross Examination

3 By Ms. Catoe:

4 Q Mr. Parker, would you agree that your
5 attorney prepared your case largely outside of your
6 presence, primarily because you were in jail?

7 A Yes ---

8 Ms. Blanchette: Your Honor, I object, that's
9 based on speculation if she says it was largely outside of
10 his presence.

11 The Court: You can ask him if he knows.

12 Ms. Catoe: (Continuing)

13 Q You do know that your attorney did lots of
14 things outside of your presence, correct?

15 A Well I'm aware of them, yeah, but he never
16 discussed anything with me.

17 Q All right, and you mentioned wanting to
18 tell the jury about how the victim's mother influenced her
19 and caused her to, I guess I don't want to say file these
20 charges, but bring, you know, ultimately bring these
21 charges against you?

22 A That was ---

23 Q Is that correct?

24 A That was her words in the tape.

25 The Court: Would you clarify for me whose

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1 mother?

2 Ms. Catoe: Yes, the victim's mother, her name
3 is Debbie Elliott.

4 Ms. Catoe: (Continuing)

5
6 Q And your contention is that she put the
7 victim up to this and threatened to take her children away
8 if, cause she didn't like you; is that correct?

9 A Yes, that's correct, but ---

10 Q The victim's mother didn't like you?

11 A Right.

12 The Court: Let him finish.

13 Ms. Catoe: (Continuing)

14 Q And the victim's mother didn't want you to
15 be with the victim?

16 A That's correct.

17 Q All right, and it's your contention ---

18 The Court: Let him finish.

19 Ms. Catoe: I'm sorry, Your Honor.

20 The Court: He said but, go ahead.

21 The Witness: (Continuing)

22 A But all that come from what she said over
23 them phone conversations so if they had of got the tape
24 then all that, if he had of got the tape like I asked him
25 to all that would have been brought out in the open right

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1 there.

2 Q I understand, do you know if the tape would
3 have been admissible under our rules?

4 A No, ma'am, I don't.

5 Q All right, and would you agree that in your
6 statement to police, the video taped statement that the
7 jury saw, would you agree that that information came out
8 and the jury saw it because they saw your statement?

9 A No, I don't think I said nothing like that
10 on the tape.

11 Q All right --

12 The Court: Does anybody have the tape?

13 Ms. Catoe: I have the, in fact, Your Honor, I'd
14 like to play it to impeach him just now because that
15 information did in fact come out.

16 The Court: All right, how long is it?

17 A I mean it's been so long ---

18 The Court: Wait, sir, wait, sir, you answer
19 questions and you, you, that's all you can do. All right,
20 any objection?

21 Ms. Blanchette: Your Honor, I just ask before
22 he gets asked any further questions that he be shown the
23 tape cause she's attempting to impeach him with it he has,
24 I think, the ability to review it.

25 The Court: All right, how long is the tape?

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1 Ms. Catoe: It's quite long, Your Honor, it's
2 probably like an hour and a half, two hours.

3 The Court: So you want to play the whole tape?

4 Ms. Catoe: I do not want to play the whole
5 tape, Your Honor.

6 The Court: Okay.

7 Ms. Catoe: In fact I'll just ask Mr. Goude
8 about that, how about that?

9 The Court: I'm not, I want ya'll to air this
10 fully, but if you're going to play, I'm going to overrule
11 your objection. He said that on the tape he didn't say
12 that or, excuse me, those issues weren't aired out. This
13 trial was five years ago, and I certainly understand a gap
14 in time unless he watched the tape last week, so I
15 understand all that. I'm extremely curious to know what's
16 on the videotape because all I've heard so far is that he's
17 denied that he kidnaped her, but apparently he admits that
18 he duct taped her hands or something.

19 Ms. Catoe: And I'll try and clarify that now,
20 Your Honor.

21 The Court: Okay, all right, so you'll, I'll let
22 you use your judgment on cross examining him with any video
23 tape but you can go ahead and continue.

24 Ms. Catoe: Thank you, Your Honor.

25 Ms. Blanchette: Your Honor, may I for the

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1 record just make sure that I make it clear that I have not
2 reviewed the tape with my client.

3 The Court: Yes, ma'am.

4 Ms. Blanchette: So it will be just testimony,
5 testifying from his recollection at trial.

6 Ms. Catoe: All right, and can I just ---

7 The Court: Unless she wants, unless she wants
8 to play the tape, go ahead.

9 Ms. Catoe: And just before I continue if I
10 could just state for the record that tape was or the C.D.
11 was contained within the file that Ms. Blanchette was
12 provided.

13 The Court: Okay.

14 Ms. Catoe: (Continuing)

15 Q All right, so, Mr. Parker, would you
16 dispute it if I tell you that in your statement you mention
17 several times that the victim's mother put her up to this
18 whole thing with bringing the charges and that she
19 threatened to have her children taken, have the victim's
20 children taken away if she tried to drop the charges or get
21 back with you?

22 A Yes, that's what she told me, that's what
23 her mother told her, yes.

24 Q All right, and if I tell you that that
25 information is contained within the video taped statement

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1 would you dispute that?

2 A I mean I can't say yes or no because I'm
3 not sure. I don't remember what was on it it's been so
4 long ago but I mean if you know more than I know then I
5 guess I have to take your word for it.

6 Q All right, now at trial, let's go back to
7 your statement. In your video statement you admit that you
8 put tape, you came into the trailer, you and the victim had
9 spoken on the telephone that morning?

10 A Right.

11 Q And she told you to come over to the
12 trailer, she would meet you at the trailer, right?

13 A Right.

14 Q And you walk into the trailer, your
15 grandmother drives you over there and you walk into the
16 trailer and you see her laying there on the sofa, correct?

17 A Correct.

18 Q All right, you go up to her and try to wake
19 her up, right?

20 A Right.

21 Q And you get, I guess you start looking for
22 your picture that she said she sleeps with --

23 A Right.

24 Q Is that correct?

25 A Yes.

1 Q You, you don't find it and you get upset?

2 A Right.

3 Q And before you know it you find ---

4 The Court: Let him, let him answer so ---

5 Ms. Catoe: Yes, Your Honor.

6 The Court: --- it won't be just you saying all
7 this.

8 Ms. Catoe: Yes, Your Honor.

9 The Witness: (Continuing)

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q Okay, and then what you say in your
14 statement is before, before you realize what you've done
15 you find that you have picked up some duct tape that was
16 there and taped, put tape around her ankle?

17 A Correct.

18 Q Is that right?

19 A Yes.

20 Q All right, and in your statement to police
21 you deny that you put any tape on her hands or her mouth;
22 is that correct?

23 A That's correct.

24 Q All right, and at trial pretty much the
25 only thing that you changed from your video statement is